WEST VIRGINIA CODE CHAPTER 5b ARTICLE 2L

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Part I. General

§5B-2L-1. Short title.

This article shall be known as the BUILD WV Act.

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§5B-2L-2. Legislative findings and purpose.

(a) The Legislature hereby finds that reasonably priced residential housing for graduate, post-graduate and professional job holders, technical workers, and entrepreneurs for targeted businesses in key geographical regions of this state is an essential component of West Virginia's comprehensive economic development. Highly meritorious measures have been undertaken under both federal law and state law for the construction of low-income housing, direct loan support, rent assistance, supportive housing for elderly citizens and citizens with disabilities, public housing programs, business location incentives and incentives for capital formation, and entrepreneurial innovation in economically depressed areas. The Legislature finds that key geographic areas of this state are on the verge of a burgeoning expansion for economic development, accompanied by unprecedented technical innovation, creation of expansive new businesses in unexplored commercial and industrial markets, with individual opportunities for employment, entrepreneurship, personal success, and personal development for the people of West Virginia.

(b) The Legislature finds that a significant constraint upon this expansion is the lack of housing for graduate, post-graduate, professional, and technical personnel whose participation is vital to the economic success of West Virginia, and to the economic, cultural, and social betterment of West Virginia. Support for low-income housing and the other assistance, enumerated above, has the firm support of the Legislature. However, support for middle income housing and middle market housing needs in these key geographic areas is lacking. Such support is crucial for expansion of technical, industrial, and commercial markets expected for West Virginia.

(c) Therefore, the Legislature hereby establishes the BUILD WV Act, with the intent to remove this constraint and provide the stimuli and incentives necessary for these developments to go forward.

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§5B-2L-3. Definitions.

(a) *General*. — When used in this article, or in the administration of this article, terms defined in 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*. — As used in this article, unless the context clearly indicates otherwise:

(1) "Agreement" means a BUILD WV project agreement entered into pursuant to this article, between the Department of Economic Development and an approved company or group of multiple party project participants with respect to a project.

(2) "Approved company" means any eligible company approved by the Department of Economic Development pursuant to this article seeking to undertake a project. The Department of Economic Development may certify multiple party projects comprised of more than one approved company, as provided in this article. "Approved company" means and includes an approved multiple party project participant.

(3) "Approved costs" means costs included, as stated herein, and not excluded pursuant to the provisions of this definition, or this article, or any other provision of this code.

(A) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons, and material persons in connection with the acquisition, construction, equipping, or installation of a project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, or installation of a project which is not paid by the vendor, supplier, delivery person, contractor, or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations and supervision of construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, or installation of a project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, or installation of a project;

(vi) All costs required for the installation of utilities, including, but not limited to: water, sewer, sewer treatment, gas, electricity, communications, and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of

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which are to be used to improve the economic situation of the approved company or group of multiple party project participants in a manner that allows the approved company or group of multiple party project participants to attract persons; and

(vii) All other costs comparable with those described in this subdivision.

(B) *Excluded costs*. — The term "approved costs" does not include:

(i) Any portion of the cost required to be paid for the acquisition, construction, equipping, or installation of a project that is financed with governmental incentives, grants or bonds, other than the exemptions and tax credits allowable under this article. "Approved costs" does not include any portion of the cost or for which the approved company or group of multiple party project participants elects to qualify for other economic development incentive tax credits authorized under West Virginia law. The exclusion of certain costs of a project under this paragraph does not automatically disqualify the remainder of the costs of the project;

(ii) Any portion of the cost of property or space that is covered by a rehabilitated building tax credit under the provisions of §11-21-8a, §11-21-8b, §11-21-8c, §11-21-8d, §11-21-8e, §11-21-8f, or §11-21-8g of this code or §11-24-23a, §11-24-23b, §11-24-23c, §11-24-23d, §11-24-23e, §11-24-23f, or §11-24-23g of this code;

(iii) Any portion of the cost of property or space that is used, in whole or in part, as a residential timeshare, commercial timeshare, or as part of any similar arrangement; or

(iv) Any portion of the cost of property or space that is excluded from certification by the Department of Economic Development by rule or administrative notice.

(4) "Certified BUILD WV district" or "certified district" means a geographic district designated pursuant to this article as an area in which a proposed BUILD WV residential housing project may be approved for certification.

(5) "Certified BUILD WV project" or "project" means BUILD WV project that has received the certification of the Department of Economic Development in accordance with this article, and for which certification remains current and in effect. A BUILD WV project shall be for the construction of residential housing, including new construction or the rehabilitation of existing unoccupied structures.

(6) "Common areas" means, but is not limited to, lawns, roads, streets, alleys, sidewalks, parks, waterways, driveways, stairways, hallways, lobbies, corridors, sidewalks, parking lots, parking garages, community swimming pools, community laundry facilities, elevators, roofs, maintenance buildings, maintenance facilities, stairways, lobbies, corridors, and other property available for common use by all tenants and groups of tenants and their invitees. Common areas of a certified BUILD WV project are included as certified project property.

(7) "Corporation" or "C corporation" means a corporation that is taxed separately from its owners for federal income tax purposes under subchapter C of the Internal Revenue Code

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and includes a limited liability company, partnership, or other entity that is treated as a corporation for federal income tax purposes.

(8) "Department of Economic Development" means the West Virginia Department of Economic Development established under the provisions of §5B-2-1 *et seq*. of this code.

(9) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity operating or intending to operate a certified project, whether owned or leased, within the state that meets the standards required by the Department of Economic Development for certification under this article. An eligible company may operate, or intend to operate, directly or indirectly through a lessee. The Department of Economic Development may certify multiple party projects comprised of more than one eligible company, as provided in this article.

(10) "*Eligible taxpayer*" —

(A) For purposes of the property value adjustment tax credit, "eligible taxpayer" means any approved company:

(i) That has made qualified investment in certified BUILD WV project property or any group of multiple party project participants that has made qualified investment in certified BUILD WV project property; or

(ii) That is subject to the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, or the owners, interest holders, partners, S Corporation shareholders, or other owners of an approved company, that receive flow-through income from the approved company, that are subject to the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code.

(B) "Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers engaged in a unitary business with an approved company or group of multiple party project participants, in which one or more members of the affiliated group is a person subject to the tax imposed under §11-24-1 *et seq*. of this code: *Provided*, That application of the property value adjustment tax credit against the tax imposed under §11-24-1 *et seq*. of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group.

(11) "Final approval" or "certification" means the action taken by the Secretary of the Department of Economic Development to certify a BUILD WV project.

(12) "Flow-through entity," "conduit entity," or "pass through entity" means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability

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company. The term “Flow-through entity,” “conduit entity,” or “pass through entity” includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the securities and exchange commission under section 12 of title I of the securities exchange act of 1934, 15 USC 78l: *Provided*, That, a partnership, limited liability company, or other entity or organization that is treated as a C corporation for federal income tax purposes shall be subject to income allocation, apportionment, and taxation under §5B-24-1 *et seq*. of this code.

(13) “Infrastructure” means, and is limited to, the real and tangible personal property located in a project that is directly used in, and necessary for, providing broadband internet access, electricity, water, natural gas, sewer service, sewage treatment service, rubbish disposal, and other utility services for residential units within a certified BUILD WV project. An electrical charging facility for charging electrical motor vehicles, or electrical hybrid motor vehicles of certified BUILD WV project residents may be treated as an infrastructure component of a certified BUILD WV project: *Provided*, That in no case shall any property or space that is used, in whole or in part, as a gasoline filling station or other motor vehicle fueling station constitute certified project property, or any part thereof.

(14) “Natural person” or “individual” means a human being.

(15) “Partner” includes a partner in a partnership, and a member in a syndicate, group, pool, joint venture, or organization.

(16) “Partnership” means and includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation, or a sole proprietorship.

(17) “Person” means and includes any natural person, corporation, limited liability company, flow-through entity, or partnership.

(18) “Taxpayer” means any person subject to the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code.

(19) “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax purposes.

(20) “Timeshare” means an agreement or arrangement in which two or more parties share the ownership of, or right to use, property (e.g. an apartment or condominium) that authorizes occupation by each party, typically for periods of less than a year. “Timeshare” includes a deeded contract providing such an arrangement and a fractional ownership agreement or arrangement. “Timeshare” means and includes property that the subject of any such agreement or arrangement.

(21) “Unitary business” means a unitary business as defined in §11-24-3a of this code.

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§5B-2L-4. Rule-making.

(a) In order to effectuate the purposes of this article, the Tax Commissioner may promulgate procedural rules, interpretive rules and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq*. of this code.

(b) In order to effectuate the purposes of this article, the Department of Economic Development or any agency, division, or subdivision thereof, may promulgate procedural rules, interpretive rules, and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq*. of this code.

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§5B-2L-5. Application of the West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act.

The provisions of this article are subject to the West Virginia Tax Procedure and Administration Act, set forth in §11-10-1 *et seq*. of this code, and the West Virginia Tax Crimes and Penalties Act, set forth in §11-9-1 *et seq*. of this code, as if the provisions thereof were set forth in extenso in this article.

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§5B-2L-6. Effective date, expiration date and required reporting.

(a) Effective July 1, 2024, and annually thereafter, the Department of Economic Development shall submit a report to the Joint Committee on Government and Finance. The report shall provide:

(1) The number and location of all projects approved pursuant to this article;

(2) The geographic distribution of the projects approved;

(3) The total number of new housing units approved over the preceding year;

(4) The total number of housing units completed oved the preceding year;

(5) The total amount of exemptions granted pursuant to §5B-2L-7 of this article;

(6) The total amount of property value adjustment tax credits allowed pursuant to §5B-2L-10 of this article; and

(7) Any other information requested by the Joint Committee on Government and Finance.

(b) Any property value adjustment tax credit authorized by this article shall be effective for corporate net income tax years and personal income tax years beginning on and after January 1, 2023.

(c) Effective January 1, 2028, the provisions of this article shall expire and have no further force or effect: *Provided*, That any tax exemption or property value adjustment tax credit authorized pursuant to this article prior to January 1, 2028, shall continue to be valid and eligible for redemption pursuant to procedures provided herein.

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Part II. Sales and Use Tax Exemption for Purchases of Tangible Personal Property and Services Directly Used in Construction, Repair, Maintenance and Refurbishment of Certified BUILD WV Housing.

§5B-2L-7. Consumers sales and service tax and use tax exemption for construction contractors.

(a) Notwithstanding the provisions of §11-15-1 *et seq*., §11-15A-1 *et seq*., and §11-15-8d of this code or any other provision of this code, purchases of building materials, tangible personal property, and services by a construction contractor or construction subcontractor directly used in construction of a certified BUILD WV project property certified pursuant to the provisions of this article are exempt from the taxes imposed by §11-15-1 et seq. and §11-15A-1 *et seq*. of this code.

(b) Purchases of services, materials, and tangible personal property for repairs, maintenance, and refurbishment of certified BUILD WV project property are exempt from the taxes imposed by §11-15-1 *et seq*. and §11-15A-1 *et seq*. of this code.

(c) The exemptions authorized under this section also apply to exempt purchases enumerated herein from the municipal consumers sales and service tax and use tax and special district excise tax: *Provided*, That exemptions authorized under this section do not apply to purchases subject to a special district excise tax that was imposed and effective under §7-22-12 or §8-38-12 of this code, as applicable, prior to the effective date of this section.

(d) The exemptions authorized under this section are limited to purchases of building materials and tangible personal property directly incorporated into certified project residential buildings and structures, common areas, and infrastructure during construction, repair, maintenance, and refurbishment of certified BUILD WV project property; including common areas, infrastructure, and services directly used in construction, repair, maintenance, and refurbishment of certified BUILD WV project property: *Provided*, That the following purchases are not exempt under the provisions of this section:

(1) Purchases of gasoline and special fuel or any other fuel or means of power for a motor vehicle or any other machine, apparatus, or engine; or

(2) Purchases subject to the consumers sales and service tax and use tax under the provisions of §11-15-3c of this code.

Part III. Authorization for Municipal Business and Occupation Tax Exemption

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Part III. Authorization for Municipal Business and Occupation Tax Exemption

§5B-2L-8. Municipal authority to exempt business and occupation tax.

Notwithstanding any other provision of this code, a municipality that imposes the municipal business and occupation tax pursuant to the provisions of §8-13-5 of this code, may authorize by ordinance, a municipal business and occupation tax exemption for gross income from rents, royalties, fees, or other remuneration derived by a lessor or landlord from the furnishing, leasing, or renting of any certified BUILD WV project property to a lessee or occupant.

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Part IV. BUILD WV Property Value Adjustment Credit.

§5B-2L-9. Eligibility for property value adjustment tax credit.

There shall be allowed to every eligible taxpayer a property value adjustment tax credit against the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, as determined under this article.

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§5B-2L-10. Amount of property value adjustment tax credit allowed.

(a) Amount of credit.

(1) The amount of total property value adjustment tax credit allowed to an eligible taxpayer is the final product of the mathematical steps specified in paragraphs (A), (B) and (C) of this subdivision.

(A) Approved costs, as certified by the Department of Economic Development multiplied by 60 percent.

(B) The product of the multiplication set forth in paragraph (A) of this subdivision, multiplied by the statewide average class III property tax rate of this state for the tax year in which construction of project property is completed, as certified by the Department of Economic Development.

(C) The product of the multiplication set forth in paragraph (B) of this subdivision, multiplied by 10.

(b) *Annual credit* — The property value adjustment tax credit shall be applied annually as specified in this article in the amount of one-tenth thereof per year for a period of 10 consecutive years beginning in the tax year in which construction of project property is completed, as certified by the Department of Economic Development. The property value adjustment tax credit shall not be carried back to any preceding tax year, nor carried forward to any succeeding tax year. However, the refundable property value adjustment tax credit may be applied in accordance with the provisions of this article. The property value adjustment tax credit shall not be transferable. Any amount of annual property value adjustment tax credit not used during the personal income tax or corporation net income tax taxable year, as applicable, (1) as a direct offset of income tax, plus (2) any refundable credit applied, as allowed under this article, is forfeited.

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§5B-2L-11. Application of annual credit allowance.

(a) *Application of annual property value adjustment tax credit against personal income tax or corporate net income tax*. — The amount of the property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, as applicable, to offset tax liabilities imposed on net income for each taxable year, beginning in the eligible taxpayer's tax year in which construction of project property is completed, as certified by the Department of Economic Development, and ending at the end of the eligible taxpayer's 10th taxable year subsequent to the tax year in which construction of project property is completed, as certified by the Department of Economic Development.

(1) *Personal income tax*. – The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq*. of this code.

(2) *Corporation net income tax*. – The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-24-1 *et seq*. of this code. Application of the property value adjustment tax credit against the tax imposed under §11-24-1 *et seq*. of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group.

(3) *Refundable portion of annual property value adjustment tax credit*. —

(A) If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax or corporation net income tax, as applicable, subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit, not to exceed $100,000 per project.

(B) The $100,000 property value adjustment tax credit refundable credit limitation applies on a per project basis, so that:

(i) If there is a single eligible taxpayer that has developed property comprising a certified BUILD WV project that is entitled to a refundable portion of the tax credit, then the $100,000 refundable credit limitation applies to that single taxpayer; or

(ii) If there are multiple eligible taxpayers that have developed of property comprising a certified BUILD WV project that are entitled to a refundable portion of the tax credit, then the $100,000 refundable credit limitation applies to, and is shared among, those multiple eligible taxpayers in such proportion as the Department of Economic Development may approve, and in no case shall the aggregate amount of refundable tax credit taken by all

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such multiple eligible taxpayers in total exceed $100,000 for the tax year.

(C) Application of the property value adjustment tax credit, as a refundable credit against the tax imposed under §11-24-1 *et seq*. of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Only that single entity shall be entitled to claim excess credit for the taxable year, if applicable, as refundable credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group. Any property value adjustment tax credit remaining after application of this subdivision for the taxable year is forfeited.

(b) *Pass-through entities*. –

(1) The annual property value adjustment tax credit allowed under this article for the year shall flow through to the equity owners of the pass-through entity in the same manner as distributive share of income flows through to the equity owners.

(2) *Personal income tax — application of annual property value adjustment tax credit against personal income tax on income from pass-through entities*. – The property value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-21-1 *et seq*. of this code, on flow-through income of an individual partner, owner, interest holder or S Corporation shareholder, which is directly and solely derived from and limited to the net income of the flow-through entity that is an eligible taxpayer that has developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax of a particular owner, interest holder, partner or S Corporation shareholder or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The $100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders, or S Corporation shareholders that receive a distributive share of flow through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the individual partners, owners, interest holders, or S Corporation shareholders, in the same manner and in the same proportions as the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple approved companies that have developed project property, the $100,000 limitation applies on a per project basis, as specified herein.

(3) *Corporation net income tax — application of annual property value adjustment tax credit against corporation net income tax on income from pass-through entities*. – The property value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-24-1 *et seq*. of this code, on flow-through income of a C corporation that is a partner, owner, interest holder, or S Corporation shareholder, which is directly and solely

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derived from and limited to the net income of the flow-through entity that is the eligible taxpayer that developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of corporation net income tax of a particular owner, interest holder, partner, S Corporation shareholder, or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The $100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders or S Corporation shareholders that receive a distributive share of flow-through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the partners, owners, interest holders or S Corporation shareholders, in the same manner and in the same proportions as the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple eligible taxpayers that have developed project property, the $100,000 limitation applies on a per project basis, as specified herein.

(c) The property value adjustment tax credit shall not apply against the ad valorem property tax. The property value adjustment tax credit shall not apply against any withholding tax or payroll tax of any taxpayer or employer.

(d) *Annual schedule*. – For purposes of asserting the property value adjustment tax credit allowed under this article against tax, the taxpayer must prepare and file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under this article, and such other information as the Tax Commissioner may require. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

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§5B-2L-12. Property value adjustment tax credit entitlement is retained by eligible taxpayers that have developed project property, transfer of credit to transferees of project property is prohibited.

(a) *Transfer or sale of assets*. —

(1) Where there has been a sale or transfer of the certified BUILD WV project assets from an eligible taxpayer to any other person or entity, the eligible taxpayer retains entitlement to the property value adjustment tax credit. Credit entitlement shall not be transferred to the transferee of project property.

(b) *Stock purchases*. – Where a corporation which is an eligible taxpayer entitled to the property value adjustment tax credit under this article is purchased through a stock purchase by a new owner, where such corporation remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the property value adjustment tax credit allowed under this article will not be affected by the ownership change: *Provided*, That the corporation otherwise remains in compliance with the requirements of this article for entitlement to the property value adjustment tax credit.

(c) *Mergers*. —

(1) Where a corporation or other entity that is an eligible taxpayer entitled to the property value adjustment tax credit under this article is merged with another corporation or entity, the surviving corporation or entity is entitled to the property value adjustment tax credit to which the predecessor eligible taxpayer was originally entitled: *Provided*, That the surviving corporation or entity otherwise complies with the provisions of this article.

(2) The amount of property value adjustment tax credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each owned the transferred certified BUILD WV project business assets.

(d) No provision of this section or of this article may be construed to allow sales, assignment, or other transfers of the property value adjustment tax credit allowed under this article. The property value adjustment tax credit allowed under this article can be redesignated as useable by a taxpayer or entity other than the original entity entitled to the credit, only in circumstances where there is a valid successorship as described under this section.

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§5B-2L-13. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person or entity has taken the property value adjustment tax credit against tax and was not entitled to take the credit, then the credit improperly taken shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under §11-21-1 *et seq*. or §11-24-1 et *seq*., or any other provision of this code shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in §11-10-1 *et seq*. of this code and such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-10-1 et seq. of this code.

(b) Notwithstanding the provisions of §11-10-1 *et seq*. of this code to the contrary, penalties and additions to tax imposed under that article may be waived at the discretion of the Tax Commissioner: Provided, That interest is not subject to waiver.

(c) Notwithstanding the provisions of §11-10-1 *et seq*. of this code to the contrary, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five years from the date of filing of any tax return on which the property value adjustment tax credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the property value adjustment tax credit allowed under this article, or five years from the date of payment of any refundable tax credit calculated pursuant to the assertion of the property value adjustment tax credit allowed under this article, whichever is later.

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§5B-2L-14. Designation of a certified district.

(a) A certified BUILD WV district may be designated upon the agreement, in writing, of the following officials: the Secretary of the Department of Economic Development, the Secretary of the Department of Tourism, and the Secretary of the Department of Commerce.

(b) A certified district shall be designated by the identification of a municipality, attraction, landmark, or other point of interest. The certified district may extend, as determined by the designation, up to 20 square miles from that municipality, attraction, landmark, or other point of interest.

(c) The following criteria shall be considered when determining whether to designate a certified district:

(1) The housing and employment needs within the certified district;

(2) Whether the certified district will have a significant and positive economic impact on the state;

(3) Whether there is substantial and credible evidence that designating the certified district will result in one or more certified projects likely to be started and completed in a timely fashion;

(4) Whether the certified district will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;

(5) Whether the certified district will, directly or indirectly, assist in the creation of additional employment opportunities in the area or assist in the filling of currently available jobs;

(6) Whether the certified district helps to diversify the local economy;

(7) Whether the certified district is consistent with the goals of this article; and

(8) Any other relevant and reasonable criteria determined by the designating officials.

(d) The number of districts within the state shall be determined within the discretion of the Secretary of the Department of Economic Development, the Secretary of the Department of Tourism, and the Secretary of the Department of Commerce by their agreement, subject to the $150 million limitation on aggregate sum of approved costs for all projects for any fiscal year as set forth in §5B-2L-16(c) of this code.

(e) A certified district may be decertified at any time upon agreement, in writing, of the designated officials provided for in subsection (a) of this section. In no case may any BUILD WV district be certified for any time period longer than 10 calendar years, unless

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redesignated in the same manner as provided for designation.

(f) In no case may a proposed BUILD WV project be certified in any geographic area that is not a certified BUILD WV district.

(g) The designation made pursuant to this section as to the designation of a certified district, refusal to designate a certified district, decertification, or revocation of certification of a BUILD WV district is final.

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§5B-2L-15. Project administration and certification.

(a) The Department of Economic Development has the following powers and duties necessary to carry out the purposes of this article, including, but not limited to:

(1) To issue approval of and certify all applications for projects and enter into agreements pertaining to certified BUILD WV projects with approved companies;

(2) To employ fiscal consultants, attorneys, appraisers, and other agents as the Secretary of the Department of Economic Development finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project;

(3) To impose and collect fees and charges in connection with any transaction;

(4) To impose and collect from the applicant a nonrefundable application fee in the amount of $5,000 to be paid to the Department of Economic Development when the application is filed;

(5) To issue approval of and certify all certified BUILD WV project residential housing units; and

(6) To decertify, refuse to certify or revoke certification of any proposed or certified BUILD WV project, upon a finding that any person or entity involved therein, or any approved company, or any eligible taxpayer, has failed to comply with the requirements of this article, or upon a finding that residential housing units, common areas or infrastructure of a certified BUILD WV project have been constructed with shoddy workmanship or materials, or that the approved company or eligible taxpayer has failed to maintain or repair certified BUILD WV project property in a manner consistent with accepted standards or standards prescribed by the Department of Economic Development, or that any aspect of the undertaking has been the result of, or involved, fraud, malfeasance, bribery, embezzlement, corruption, intimidation or gross misconduct. Upon revocation, all tax credit authorized under this article shall be null and void and of no further force, or effect. No company, entity, or person shall apply or use any tax credit to offset tax on or after the date of revocation. The Tax Commissioner may apply credit recapture, and tax assessment and collection actions as may be appropriate under the West Virginia Tax Procedure and Administration Act and may seek criminal sanctions, as appropriate, under West Virginia Tax Crimes and Penalties Act.

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§5B-2L-16. Project application; evaluation standards; approval of projects.

(a) Each eligible company or group of multiple party project participants that seeks certification of a proposed project as a certified BUILD WV project must file a written application for approval and certification of the project with the Department of Economic Development.

(b) With respect to each eligible company or group of multiple party project participants making an application to the Department of Economic Development seeking certification of a proposed project as a certified BUILD WV project the Department of Economic Development shall make inquiries and request documentation, including a completed application, from the applicant that shall include the following:

(1) A description and location of the proposed project;

(2) Capital and other anticipated expenditures for the project and the sources of funding therefor;

(3) The anticipated employment, revenues and expenses generated by the project; and

(4) Anything else determined necessary by the Department of Economic Development.

(c) The aggregate sum of approved costs for all projects for any fiscal year shall not exceed $150 million. Any project application submitted for certification in the fiscal year after the sum of $150 million has been reached shall not be approved or certified. Notwithstanding any other provision of this code, for any fiscal year, the Secretary of the Department of Economic Development may not approve any single proposed project as a certified BUILD WV project for the fiscal year unless the proposed project has an aggregate sum of approved costs that is at least $3 million or the proposed project includes at least six residential units or houses.

(d) The Secretary of the Department of Economic Development, within 60 days following receipt of an application or receipt of any additional information requested by the Department of Economic Development respecting the application, whichever is later, shall act to grant or not to grant certification of the project, based on the following criteria:

(1) The project will have approved costs of at least $3 million or includes at least six residential units or houses;

(2) The project will have a significant and positive economic impact on the state;

(3) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(4) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

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(5) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;

(6) Whether the project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the project will be located;

(7) Whether the project helps to diversify the local economy;

(8) Whether the project is consistent with the goals of this article;

(9) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting;

(10) Whether the proposed project demonstrates that the project will meet the immediate future needs of the area; and

(11) The ability of the eligible company or group of multiple party project participants to carry out the project.

(e) Exclusions.

(1) In no case shall any property or space that is used, in whole or in part, as a residential timeshare, commercial timeshare, or as part of any similar arrangement, constitute certified project property, or any part thereof.

(2) In no case shall any property or space that is used in whole or in part as an industrial or manufacturing operation, constitute certified project property, or any part thereof.

(3) In no case shall any property or space that is used in whole or in part as a warehouse, distribution center, telephone call center, or telemarketing operation, constitute certified project property, or any part thereof.

(4) In no case shall any property or space that is used, in whole or in part, as an airport constitute certified project property, or any part thereof.

(5) In no case shall any property or space that is used primarily for business activity, business, or other operation or activity excluded from certification by the Department of Economic Development by rule or administrative notice, constitute certified project property, or any part thereof.

(f) The Department of Economic Development may establish additional criteria for consideration when evaluating and approving applications for certified BUILD WV housing projects.

(g) The decision by the Secretary of the Department of Economic Development as to

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certification of a proposed project, refusal to certify a proposed project, decertification, or revocation of certification of a project is final.

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§5B-2L-17. Agreement between Department of Economic Development and approved company or approved group of multiple party project participants.

(a) The Department of Economic Development, upon final approval of an application by the Secretary, may enter into an agreement with any approved company or group of multiple party project participants with respect to a project.

(b) The Department of Economic Development may, at the discretion of the Secretary of the Department of Economic Development, approve an application for project certification constituting a single company application or a multiple party project application. The Secretary of the Department of Economic Development may certify a multiple party project, and may enter into an agreement with the principals thereof. For purposes of this article, a multiple party project participant must be an eligible company as defined in this article. The terms and provisions of each agreement shall include, but not be limited to:

(1) Total projected approved costs.

(2) Within three months of the completion date, the approved company or group of multiple party project participants shall document:

(A) The actual cost of the project through a certification of the costs to the Department of Economic Development by an independent certified public accountant acceptable to the Department of Economic Development; and

(B) A date certain by which the approved company or group of multiple party project participants shall have completed and opened the certified project for occupancy.

(3) Any approved company or group of multiple party project participants, having received final approval may request, and the Department of Economic Development may grant, an extension of time or change to the expected timeline. However, in no event shall the extension exceed three years from the date of certification to the completion date specified in the agreement with the approved company or group of multiple party project participants.

(c) Although adjacent properties may be developed and expanded upon by approved companies or others, and certified BUILD WV project property may itself be developed and expanded upon, in such cases, the certified BUILD WV project designation and the tax incentives and benefits of this article shall not apply with relation to such noncertified developments or expansions, except upon the issuance of a subsequent certification by the Department of Economic Development for such development or expansion. In no case may a certified project be augmented, enlarged, extended or expanded, except pursuant to issuance of an additional and separate certification of a new and distinct project. Any augmentation, enlargement, extension or expansion may only be approved and certified pursuant to the submission of a new request for project approval, with full payment of all associated fees, and submission of full documentation as required under this article for a new project.

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