

**WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2760**

BY DELEGATES CAPITO, QUEEN, RILEY, MANDT, L. PACK,

YOUNG, HOTT AND MAYNARD

[Passed April 10, 2021; in effect ninety days from passage.]

**FILED**

2021 APR 28 P 4: 21

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

HB 2760

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1 AN ACT to amend and reenact §11-13Q-9, §11-13Q-10, §11-13Q-10a and §11-13Q-22 of the  
2 Code of West Virginia, 1931, as amended, all relating to economic development incentive  
3 tax credits; authorizing credit for the creation of 10 jobs under certain circumstances;  
4 terminating small business credit after a certain date; eliminating credit to business  
5 franchise tax; authorizing certain manufacturing activities to qualify for high technology  
6 manufacturing tax credit; providing definitions; limiting certain multiple tax credits for the  
7 same qualified investment; eliminating prevailing wage requirement for certain additional  
8 credit; providing effective dates.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

**§11-13Q-9. New jobs percentage.**

1 (a) *In general.* — The new jobs percentage is based on the number of new jobs created  
2 in this state directly attributable to the qualified investment of the taxpayer.

3 (b) *When a job is attributable.* — An employee's position is directly attributable to the  
4 qualified investment if:

5 (1) The employee's service is performed or his or her base of operations is at the new or  
6 expanded business facility;

7 (2) The position did not exist prior to the construction, renovation, expansion, or acquisition  
8 of the business facility and the making of the qualified investment; and

9 (3) But for the qualified investment, the position would not have existed.

10 (c) *Applicable percentage.* —

11 (1) For the purpose of subsection (a) of this section, the applicable new jobs percentage  
12 is determined under the following table:

If number of new jobs is at least:	The applicable percentage is:
20	20%

16	280	25%
17	520	30%

18 (2) *Provided*, That for credit applications filed for taxable years beginning on and after  
19 January 1, 2022, for the purpose of subsection (a) of this section, the applicable new jobs  
20 percentage is determined under the following table:

21	If number of	The applicable
22	new jobs is at least:	percentage is:
23	10	10%
24	20	20%
25	280	25%
26	520	30%

27 (d) *Certification of new jobs*. — With the annual return for the applicable taxes filed for the  
28 taxable year in which the qualified investment is first placed in service or use in this state, the  
29 taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by  
30 it in this state within the period prescribed in subsection (f) of this section that are, or will be,  
31 directly attributable to the qualified investment of the taxpayer. For purposes of this section,  
32 “applicable taxes” means the taxes imposed by §11-13-1, *et seq.*, §11-21-1, *et seq.*, and §11-24-  
33 1, *et seq.* of this code against which this credit is applied.

34 (e) *Equivalency of permanent employees*. — The hours of part-time employees shall be  
35 aggregated to determine the number of equivalent full-time employees for the purpose of this  
36 section.

37 (f) *Redetermination of new jobs percentage*. — With the annual return for the applicable  
38 taxes imposed, filed for the third taxable year in which the qualified investment is in service or  
39 use, the taxpayer shall certify the actual number of new jobs created by it in this state that are  
40 directly attributable to the qualified investment of the taxpayer.

41 (1) If the actual number of jobs created would result in a higher new jobs percentage, the  
42 credit allowed under this article shall be redetermined and amended returns filed for the first and  
43 second taxable years that the qualified investment was in service or use in this state.

44 (2) If the actual number of jobs created would result in a lower new jobs percentage, the  
45 credit previously allowed under this article shall be redetermined and amended returns filed for  
46 the first and second taxable years. In applying the amount of redetermined credit allowable for  
47 the two preceding taxable years, the redetermined credit shall first be applied to the extent it was  
48 originally applied in the prior two years to personal income taxes, then to corporation net income  
49 taxes, and, lastly, to business and occupation taxes. Any additional taxes due under this chapter  
50 shall be remitted with the amended returns filed with the commissioner, along with interest, as  
51 provided in §11-10-17 of this code, and a 10-percent penalty determined on the amount of taxes  
52 due with the amended return, which may be waived by the commissioner if the taxpayer shows  
53 that the overclaimed amount of the new jobs percentage was due to reasonable cause and not  
54 due to willful neglect.

55 (g) *Additional new jobs percentage.* -- When the qualified investment is \$20 million or  
56 more and, if the number of full-time construction laborers and mechanics working at the job site  
57 of the new or expanded business facility is 75 or more, or if the number of hours of all construction  
58 laborers and mechanics working at the job site is equal to or greater than the number of hours 75  
59 full-time construction laborers and mechanics would have worked at the job site during a 12  
60 consecutive month period, a taxpayer that is allowed a new jobs percentage determined under  
61 subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points  
62 higher than the new jobs percentage allowed under subsection (a) of this section. In no event  
63 may construction laborers and mechanics be used to attain or retain a subsection (a) new jobs  
64 percentage. The number of full-time construction laborers and mechanics working at the job site  
65 shall be determined by dividing the total number of hours worked by all construction laborers and  
66 mechanics on a new or expanded business facility during a 12 consecutive month period by 2,080

67 hours per year. A taxpayer may not claim the additional new jobs percentage allowed by this  
68 section unless the taxpayer includes with the certification filed under subsection (d) of this section  
69 a certification signed by the general contractor or the construction manager certifying that  
70 construction laborers employed at the job site during a consecutive 12 month period aggregated  
71 the equivalent of at least 75 full-time employees and the taxpayer has received from the general  
72 contractor or construction manager records substantiating the certification, which records shall be  
73 retained by the taxpayer for 13 years after the day the expansion to an existing business facility,  
74 or the new business facility, is first placed in service or use by the taxpayer. For purposes of this  
75 subsection:

76 (1) The term "construction laborers and mechanics" means those workers, utilized by a  
77 contractor or subcontractor at any tier, whose duties are manual or physical in nature, including  
78 those workers who use tools or are performing the work of a trade, as distinguished from mental  
79 or managerial and working foremen who devote more than 20 percent of their time during a  
80 workweek performing the duties of a laborer or mechanic; and

81 (2) The term "job site" is limited to the physical place or places where the construction  
82 called for in the contract will remain when the work on it is completed and nearby property, as  
83 described in subdivision (3) of this subsection, used by the contractor or subcontractor during  
84 construction that, because of proximity, can reasonably be included in the "site".

85 (3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile  
86 factories, batch plants, borrow pits, job headquarters and tool yards are part of the "job site"  
87 provided they are dedicated exclusively, or nearly so, to performance of the contract or project  
88 and are located in proximity to the actual construction location so that it would be reasonable to  
89 include them.

90 (4) The term "job site" does not include permanent home offices, branch offices, branch  
91 plant establishments, fabrication yards or tool yards of a contractor or subcontractor whose

92 locations and continuance in operation are determined without regard to the contract or  
93 subcontract for construction of a new or expanded business facility.

**§11-13Q-10. Credit for small business.**

1           (a) *Small business defined.* — For purposes of this section, the term “small business”  
2 means a business which has annual gross receipts of not more than \$7 million (including the  
3 gross receipts of any affiliates in its controlled group): *Provided*, That beginning January 1, 2004,  
4 and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall  
5 apply in lieu of the \$7 million amount during that calendar year. This amount is prescribed by  
6 increasing the \$7 million amount by the cost-of-living adjustment for that calendar year. The  
7 requirements for annual gross receipts, once met by a given taxpayer in that taxable year when  
8 qualified investment is first placed in service or use, may not again be applied to that same  
9 taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained  
10 entitlement in that year.

11           (1) *Cost-of-living adjustment.* — For purposes of subsection (a) of this section, the cost-  
12 of-living adjustment for any calendar year is the percentage (if any) by which the consumer price  
13 index for the preceding calendar year exceeds the consumer price index for the calendar year  
14 2002.

15           (2) *Consumer price index for any calendar year.* — For purposes of subdivision (1) of this  
16 subsection, the consumer price index for any calendar year is the average of the federal consumer  
17 price index as of the close of the 12-month period ending on August 31 of that calendar year.

18           (3) *Consumer price index.* — For purposes of subdivision (2) of this subsection, the term  
19 “Federal Consumer Price Index” means the most recent consumer price index for all urban  
20 consumers published by the United States department of labor.

21           (4) *Rounding.* — If any increase under subdivision (1) of this subsection is not a multiple  
22 of \$50, the increase shall be rounded to the next lowest multiple of \$50.

23           (b) *Amount of credit allowed.* —

24           (1) *Credit allowed.* — An eligible small business taxpayer is allowed a credit against the  
25 portion of taxes imposed by this state that are attributable to and the direct consequence of the  
26 eligible small business taxpayer’s qualified investment in a new or expanded business in this state  
27 which results in the creation of at least 10 new jobs within 12 months after placing qualified  
28 investment into service. The amount of this credit is determined as provided in subdivision (2) of  
29 this subsection.

30           (2) *Amount of credit.* — The annual amount of credit allowable under this subsection is  
31 determined by dividing the amount of the eligible small business taxpayer’s “qualified investment”  
32 (determined under §11-13Q-8. of this code) in “property purchased for business expansion” (as  
33 defined in §11-13Q-3 of this code) by 10. The amount of qualified investment so apportioned to  
34 each year of the 10-year credit period is the annual measure against which a taxpayer’s annual  
35 new jobs percentage (determined under subsection (d) of this section) is applied. The product of  
36 this calculation establishes the maximum amount of credit allowable each year for 10 consecutive  
37 years under this section due to the qualified investment.

38           (3) *Application of credit.* — The annual credit allowance shall be taken beginning with the  
39 taxable year in which the taxpayer places the qualified investment into service or use in this state,  
40 unless the taxpayer elects to delay the beginning of the 10-year credit period until the next  
41 succeeding taxable year. This election is made in the annual income tax return filed under this  
42 chapter by the taxpayer for the taxable year in which the qualified investment is first placed in  
43 service or use. Once made, this election cannot be revoked. The annual credit allowance shall be  
44 taken and applied in the manner prescribed in §11-13Q-7 of this code.

45           (c) *New jobs.* — The term “new jobs” has the meaning ascribed to it in §11-13Q-3 of this  
46 code.

47           (1) The term “new employee” has the meaning ascribed to it in §11-13Q-3 of this code:  
48 *Provided,* That this term does not include employees filling new jobs who:



49 (A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue  
50 Code of 1986, or a person who owns 10 percent or more of the business with such ownership  
51 interest to be determined under rules set forth in subsection (b), section 267 of said Internal  
52 Revenue Code; or

53 (B) Worked for the taxpayer during the six-month period ending on the date the taxpayer's  
54 qualified investment is placed in service or use and is rehired by the taxpayer during the six-month  
55 period beginning on the date taxpayer's qualified investment is placed in service or use.

56 (2) *When a job is attributable.* — An employee's position is directly attributable to the  
57 qualified investment if:

58 (A) The employee's service is performed or his or her base of operations is at the new or  
59 expanded business facility;

60 (B) The position did not exist prior to the construction, renovation, expansion, or  
61 acquisition of the business facility and the making of the qualified investment; and

62 (C) But for the qualified investment, the position would not have existed.

63 (d) *New jobs percentage.* — The annual new jobs percentage is based on the number of  
64 new jobs created in this state by the taxpayer directly attributable to taxpayer's qualified  
65 investment.

66 (1) If at least 10 new jobs are created and filled during the taxable year in which the  
67 qualified investment is placed in service or use, the applicable new jobs percentage is 10 percent.

68 (2) During each of the remaining nine years of the 10-year credit period, the annual new  
69 jobs percentage is based on the average number of new jobs filled during that taxable year:

70 *Provided,* That for purposes of estimating the new jobs percentage that will be applicable for each  
71 subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable  
72 year immediately prior thereto, and in the annual income tax return filed under this chapter for the  
73 then current tax year, the taxpayer shall redetermine his or her allowable new jobs percentage for

74 that year based on the average number of new employees employed in new jobs during that year  
75 (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

76 (e) *Certification of new jobs.* — With the annual income tax return filed under this chapter  
77 for each taxable year during the 10-year credit period, the taxpayer shall certify:

78 (1) The new jobs percentage for that taxable year;

79 (2) The amount of the credit allowance for that year;

80 (3) If the business is a partnership, limited liability company or electing small business  
81 corporation, the amount of credit allocated to the partners, members, or shareholders, as the case  
82 may be for that year;

83 (4) That qualified investment property continue to be used in the business, or if any of it  
84 was disposed of during the year the date of disposition and that the property was not disposed of  
85 prior to expiration of its useful life, as determined under §11-13Q-8 of this code; and

86 (5) That the new jobs created by the qualified investment continue to exist and are filled  
87 by persons who meet the definition of new employee (as defined in this section).

88 (f) *Small business project.* — A small business may apply to the commissioner under §11-  
89 13Q-6 of this code for certification as a project if that project will create at least 10 new jobs.

90 (g) *Rules.* — The commissioner may prescribe such rules as he or she determines  
91 necessary in order to determine the amount of credit allowed under this section to a taxpayer; to  
92 verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the  
93 credit allowed.

94 (h) The commissioner may require a taxpayer intending to claim credit under this section  
95 to file with the commissioner a notice of intent to claim this credit, before the taxpayer begins  
96 reducing his or her monthly or quarterly installment payments of estimated tax for the credit  
97 provided in this section.

98 (i) *Termination of Credit* — No credit is allowable under this section to any taxpayer for  
99 investment placed in service or use in any tax year beginning on or after January 1, 2022.

100 Taxpayers that have gained lawful entitlement to the credit allowable under this section pursuant  
101 to qualified investment placed in service or use prior to January 1, 2022, shall retain that  
102 entitlement and apply the credit in due course pursuant to the requirements and limitations of this  
103 article.

**§11-13Q-10a. Credit allowed for specified high technology manufacturers.**

1 (a) *High technology manufacturing business defined.* –

2 For purposes of this section, the term “high technology manufacturing business” means  
3 and is limited to only those businesses engaged in a business enumerated in subdivision (1) of  
4 this subsection: *Provided*, That for tax years beginning on and after January 1, 2022, the term  
5 “high technology manufacturing business” means and is limited to only those businesses engaged  
6 in a business enumerated in subdivision (1) or subdivision (2), or both, of this subsection.

7 (1) “High technology manufacturing business” means a manufacturing activity properly  
8 classified as having one or more of the following six-digit North American Industry Classification  
9 System code numbers.

North American Industry Classification System Code	Manufacturing Activity
334111	Computer & Peripheral Equipment Electronic Computers
334112	Computer Storage Devices Electronic Components
334411	Electron Tubes
334414	Electronic Capacitors Semiconductors
334413	Semiconductor & Related Devices
333295	Semiconductor Machinery

10 (2) "High technology manufacturing business" means, in addition to those activities  
11 enumerated in subdivision (1) of this subsection:

12 (A) The activity of manufacturing drones, target drones, unmanned aircraft or unmanned  
13 robotic aircraft,

14 (B) The activity of manufacturing autonomous motor vehicles,

15 (C) The activity of manufacturing robots, robotic medical machines or equipment or robotic  
16 surgical machines or equipment,

17 (D) The activity of manufacturing machines, equipment and products predominantly  
18 operated by and incorporating artificial intelligence.

19 (E) The activity of manufacturing biotechnology products.

20 (F) The activity of manufacturing medical devices.

21 (3) *Definitions* – For purposes of this section.

22 (A) *Artificial Intelligence* — For purposes of this section "artificial intelligence" means  
23 computers and computer systems that, by design and function, perform tasks that would typically  
24 require human intelligence, including decision-making, visual perception, speech recognition, or  
25 translation of one human language into another human language.

26 (B) *Autonomous* — For purposes of this section "autonomous" means that set of  
27 characteristics of a machine which taken as a whole cause the machine to be capable of  
28 performing designated tasks without immediate direct or explicit human control or intervention  
29 beyond initial programming and preliminary set up and initiation.

30 (C) *Autonomous Motor Vehicle* — For purposes of this section, The term "autonomous  
31 motor vehicle" means a motor vehicle that conforms to Level 3, level 4 or level 5 of the Society of  
32 Automotive Engineers automation level definitions specified in SAE International Standard J3016.

33 (D) *Biotechnology*

34 (i) "Biotechnology" means scientific invention, processes and methods, or industrial  
35 invention, processes and methods, based on the science of biology, microbiology, molecular

36 biology, cellular biology, biochemistry, or biophysics, or any combination thereof. Biotechnology  
37 includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering,  
38 cell fusion techniques, and bioprocesses, using living organisms, or parts of organisms.

39 (ii) Biotechnology does not include farming, agriculture, or animal or apiary husbandry, or  
40 the production of any crop or agricultural product by traditional growing processes or by  
41 hydroponic growing processes, or fish farming, or the raising or growing or production of fish or  
42 any aquatic animal or product.

43 (iii) Biotechnology does not include zymurgy, wine making, brewing, preparation of yeast  
44 used in food production or preparation, or any food or drink preparation or production.

45 (E) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin,  
46 antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product  
47 produced through the application of biotechnology that is used in the prevention, treatment, or  
48 cure of diseases or injuries to humans, animals, or plants.

49 (F) *Drone* – For purposes of this section "drone" means an unmanned aircraft that may be  
50 controlled either remotely or by an autonomous system, which may work with internal systemic  
51 sensors or ground positioning satellite systems, or both.

52 (G) "Medical device" means an instrument, apparatus, implement, machine, contrivance,  
53 implant, in vitro reagent, or other similar or related article, including any component, part, or  
54 accessory, that is:

55 (i) Recognized in the national formulary or any supplement thereof, or the United States  
56 pharmacopeia, or any supplement thereof;

57 (ii) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or  
58 prevention of disease or other conditions in human beings or animals; or

59 (iii) Intended to affect the structure or any function of the body of human beings or animals,  
60 and which does not achieve any of its primary intended purposes through chemical action within

61 or on the body of human beings or animals and which is not dependent upon being metabolized  
62 for the achievement of any of its principal intended purposes.

63 (H) *Program* – For purposes of this section “program” means a set of instructions that can  
64 be executed by a computer, or other machine or device to perform calculations, processes or  
65 operations, or a combination thereof, to execute a specific task or series of tasks.

66 (I) *Robot* – For purposes of this section “robot” means a programmable machine, for which  
67 operating instructions are typically derived from computer programming, which machine is: (i)  
68 Capable of performing operations and processes involving physical movement; (ii) designed to  
69 operate with a degree of autonomy; (iii) capable of processing data and information, including  
70 data or information derived from visual perception or other physical perceptions; and (iv) capable  
71 of engaging in intelligent behavior derived from artificial intelligence.

72 (b) *Amount of credit allowed.*

73 (1) *Credit allowed.* — An eligible high technology manufacturing business taxpayer is  
74 allowed a credit against the portion of taxes imposed by this state that are attributable to and the  
75 direct consequence of the eligible high technology manufacturing business taxpayer’s qualified  
76 investment in a new or expanded high technology manufacturing business in this state which  
77 results in the creation of at least 20 new jobs within 12 months after placing qualified investment  
78 into service. The amount of this credit is determined as provided in this section.

79 (2) *Amount of credit.* — The annual amount of credit allowable under this subsection is  
80 100 percent of the tax attributable to qualified investment, for each consecutive year of a 20-year  
81 credit period.

82 (3) *Application of credit.* — The annual credit allowance shall be taken beginning with the  
83 taxable year in which the taxpayer places the qualified investment into service or use in this state,  
84 unless the taxpayer elects to delay the beginning of the 20-year credit period until the next  
85 succeeding taxable year. This election is made in the annual income tax return filed under this  
86 chapter by the taxpayer for the taxable year in which the qualified investment is first placed in

87 service or use. Once made, this election cannot be revoked. The annual credit allowance shall be  
88 taken and applied against the taxes enumerated in §11-13Q-7 of this code. The credit shall offset  
89 100 percent of tax attributable to qualified investment and shall be applied for a period of 20  
90 consecutive years without carryover.

91 (c) *New jobs.* — The term “new jobs” has the meaning ascribed to it in §11-13Q-3 of this  
92 code.

93 (1) The term “new employee” has the meaning ascribed to it in §11-13Q-3 of this code:  
94 *Provided*, That this term does not include employees filling new jobs who:

95 (A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue  
96 Code of 1986, or a person who owns 10 percent or more of the business with such ownership  
97 interest to be determined under rules set forth in subsection (b), section 267 of the Internal  
98 Revenue Code of 1986; or

99 (B) Worked for the taxpayer during the six-month period ending on the date the taxpayer’s  
100 qualified investment is placed in service or use and is rehired by the taxpayer during the six-month  
101 period beginning on the date taxpayer’s qualified investment is placed in service or use.

102 (2) *When a job is attributable.* — An employee’s position is directly attributable to the  
103 qualified investment if:

104 (A) The employee’s service is performed or his or her base of operations is at the new or  
105 expanded business facility;

106 (B) The position did not exist prior to the construction, renovation, expansion, or  
107 acquisition of the business facility and the making of the qualified investment;

108 (C) But for the qualified investment, the position would not have existed; and

109 (D) The median compensation of the new jobs attributable to the qualified investment is  
110 greater than \$45,000 per year: *Provided*, That this median compensation amount shall be  
111 adjusted for inflation each year in accordance with the provisions of this section.

112           (3) *Median compensation adjusted for inflation.* — The median compensation  
113 requirements applicable to high technology manufacturing business taxpayers for purposes of  
114 this section, shall be adjusted for inflation by application of a cost-of-living adjustment. The  
115 adjusted median compensation amount shall be applicable, as adjusted, each year throughout  
116 the 20-year credit period. Failure of a taxpayer entitled to credit under this section to meet the  
117 median compensation requirement for any year will result in forfeiture of the credit for that year.  
118 However, if in any succeeding year within the original 20 year credit period, the taxpayer pays a  
119 median compensation to its employees which exceeds the inflation adjusted median  
120 compensation amount for that year, the taxpayer shall regain entitlement to take the credit for that  
121 year only. No credit forfeited in a prior year shall be taken, and the tax year or years to which the  
122 forfeited credit would have been applied shall be forfeited and deducted from the remainder of  
123 the years over which the credit can be taken.

124           (A) *Cost-of-living adjustment.* — For purposes of this section, the cost-of-living adjustment  
125 for any calendar year is the percentage, if any, by which the consumer price index for the  
126 preceding calendar year exceeds the consumer price index for the calendar year 2007.

127           (B) *Consumer price index for any calendar year.* — For purposes of this section, the  
128 consumer price index for any calendar year is the average of the federal consumer price index as  
129 of the close of the 12-month period ending on August 31 of such calendar year.

130           (C) *Consumer price index.* — For purposes of this section, the term “Federal Consumer  
131 Price Index” means the last consumer price index for all urban consumers published by the United  
132 States Department of Labor.

133           (D) *Rounding.* — If any increase in the median compensation amount under this section  
134 is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

135           (d) *Credit exclusion.* —

136           (1) Any taxpayer that has taken the credit against tax authorized under this section shall  
137 not be eligible for application of the credit allowed under any other section of this article during



138 the twenty year credit period authorized by this section for the same qualified investment on which  
139 credit allowed by this article was taken.

140 (2) Any taxpayer that has taken the credit against tax authorized under this section may  
141 not take the credit authorized under any other provision of this code for the same qualified  
142 investment on which credit allowed by this article was taken.

143 (e) *Rules.* — The commissioner may prescribe such rules as he or she determines  
144 necessary in order to determine the amount of credit allowed under this section to a taxpayer; to  
145 verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the  
146 credit allowed.

147 (f) *Notices and reports.* — The commissioner may require a taxpayer intending to claim  
148 credit under this section to file with the commissioner a notice of intent to claim this credit before  
149 the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated  
150 tax for the credit provided in this section.

**§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.**

1 (a) Notwithstanding any provision of this article to the contrary, a taxpayer engaged in one  
2 or more of the industries or business activities specified in §11-13Q-19 of this code which does  
3 not satisfy the new jobs percentage requirement prescribed in §11-13Q-9(c) of this code but which  
4 otherwise fulfills the requirements prescribed in this article, is permitted to claim a credit against  
5 the taxes specified in §11-13Q-7 of this code in the order so specified that are attributable to and  
6 the consequence of the taxpayer's business operations in this state which result in the creation  
7 of net new jobs. Credit under this section is allowed in the amount of \$3,000 per year, per new  
8 job created and filled by a new employee, as those terms are defined in §11-13Q-3 of this code  
9 for a period of five consecutive years beginning in the tax year when the new employee is first  
10 hired. In no case may the number of new employees determined for purposes of this section  
11 exceed the total net increase in the taxpayer's employment in this state. Credit allowed under this

12 section shall be allowed beginning in the tax year when the new employee is first hired: *Provided*,  
13 That each new job:

14 (1) Pays at least \$32,000 annually. Beginning January 1, 2010, and on January 1 of each  
15 year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the \$32,000  
16 amount during that calendar year. This amount is prescribed by increasing the \$32,000 figure by  
17 the cost-of-living adjustment for that calendar year;

18 (2) Provides health insurance and may offer benefits including child care, retirement or  
19 other benefits; and

20 (3) Is a full-time, permanent position, as those terms are defined in section three of this  
21 article.

22 (b) Jobs that pay less than \$32,000 annually, or less than the amount prescribed by the  
23 commissioner pursuant to subdivision (1) of subsection (a) of this section, whichever is higher, or  
24 that pay that salary but do not also provide benefits in addition to the salary do not qualify for the  
25 credit authorized by this section. Jobs that are less than full-time, permanent positions do not  
26 qualify for the credit authorized by this section.

27 The employer having obtained entitlement to the credit shall not be required to raise wages  
28 of employees currently employed in jobs upon which the initial credit was based by reason of the  
29 cost-of-living adjustment.

30 (c) For purposes of this section, the following definitions apply:

31 (1) *Cost-of-living adjustment*. — For purposes of subsection (a) of this section, the cost-  
32 of-living adjustment for any calendar year is the percentage (if any) by which the consumer price  
33 index for the preceding calendar year exceeds the consumer price index for the calendar year  
34 2009.

35 (2) *Consumer price index for any calendar year*. — For purposes of subdivision (1)  
36 subsection (a) of this section, the consumer price index for any calendar year is the average of

37 the federal consumer price index as of the close of the twelve-month period ending on August 31  
38 of that calendar year.

39 (3) *Consumer price index.* — For purposes of subdivision (2) of this subsection, the term  
40 “federal consumer price index” means the most recent consumer price index for all urban  
41 consumers published by the United States Department of Labor.

42 (4) *Rounding.* — If any increase under subdivision (1) of this subsection is not a multiple  
43 of \$50, the increase shall be rounded to the next lowest multiple of \$50.

44 (d) Unused credit remaining in any tax year after application against the taxes specified in  
45 section seven of this article is forfeited and does not carry forward to any succeeding tax year and  
46 does not carry back to a prior tax year.

47 (e) The tax credit authorized by this section may be taken in addition to any credits  
48 allowable under §11-13C-1 *et seq.*, §11-13D-1 *et seq.*, §11-13E-1 *et seq.*, §11-13F-1 *et seq.*,  
49 §11-13G-1 *et seq.*, §11-13J-1 *et seq.*, §11-13R-1 *et seq.*, or §11-13S-1 *et seq.* of this code.  
50 However, any taxpayer that is taking, or that has taken, any credit against tax authorized under  
51 this article may not take the credit authorized under any other provision of this code for the same  
52 qualified investment on which credit allowed by this article was taken.

53 (f) *Reduction in number of employees credit forfeiture.* — If, during the year when a new  
54 job was created for which credit was granted under this section or during any of the next  
55 succeeding four tax years thereafter, net jobs that are attributable to and the consequence of the  
56 taxpayer’s business operations in this state decrease, counting both new jobs for which credit  
57 was granted under this section and preexisting jobs, then the total amount of credit to which the  
58 taxpayer is entitled under this section shall be decreased and forfeited in the amount of \$3,000  
59 for each net job loss.

60 (g) Amendments to this section enacted during the 2021 regular session of the Legislature  
61 shall be effective for tax years beginning on or after January 1, 2022.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Dean Teppie*  
.....  
Chairman, House Committee

*Mark Blaylock*  
.....  
Chairman, Senate Committee

**FILED**  
2021 APR 28 P 4: 21  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Originating in the House.

In effect ninety days from passage.

*Steve Harrison*  
.....  
Clerk of the House of Delegates

*Joe Orrin*  
.....  
Clerk of the Senate

*Don Hancock*  
.....  
Speaker of the House of Delegates

*C.P. Brown*  
.....  
President of the Senate

The within *is approved* this the *28th*  
day of *April* ..... 2021.

*James Owens*  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 22 2021

Time 1:53 pm