**TITLE 110**

**LEGISLATIVE RULE**

**STATE TAX DEPARTMENT**

**SERIES 13II**

**HIGH-WAGE GROWTH BUSINESS TAX CREDIT**

**§110-13II-1. General.**

 1.1. Scope. -- This legislative rule explains and implements the Tax Commissioner’s responsibilities under the High-Wage Growth Business Tax Credit enacted in H. B. 4558, which was effective June 5, 2020.

 1.2. Authority. -- W. Va. Code § 11-10-5 and §11-13II-5.

 1.3. Filing Date. --

 1.4. Effective Date. --

 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

**§110-13II-2. Definitions**.

 General Rule. – This rule incorporates by reference the definitions in W. Va. Code § 11-13II-2 (HB 4558). Other terms used in this rule are defined as provided in W. Va. Code § 11-10-1, *et seq*., §11-121-1 *et seq*., and §11-24-1 *et seq*.

**§11-13II-3. Applying approved High-Wage Growth Business Tax Credits.**

 3.1. After the West Virginia Development Office approves a taxpayer’s application for High-wage Growth Business Tax Credit, the Development Office shall forward the approved application to the Tax Commissioner. The Tax Commissioner shall review the approved application to determine whether the employer applicant has fulfilled its obligations as set forth in the application approved by the Development Office. The Tax Commissioner may request additional information from the applicant employer as may be necessary to determine whether the application is correct and whether the applicant employer is eligible for the annual tax credit for that year. The Tax Commissioner may request that the applicant revise the application approved by the Development Office. If the applicant does not fulfill the obligations set forth in the application, the Tax Commissioner shall deny that portion of the tax credits otherwise allowable that are attributable to the unfulfilled obligations.

 3.2. Approved High-Wage Growth Tax Credits may be used when the employer files it tax return for the applicant’s taxable year after the application for the credit was filed with the Development Office.

 3.3. Corporation. -- The High-Wage Growth Tax Credit allowed to an eligible taxpayer that pays the West Virginia Corporation Net Income Tax imposed by W. Va. Code § 11-24-4 is applied before any other allowable credits are applied against the tax. The taxpayer that has unused High-Wage Growth Tax Credits may elect to have up ot $100,000 refunded as provided in subsection 3.3.5 of this rule, or to carry forward unused tax credit to a subsequent taxable year until the earlier of the following:

 3.3.1. The full amount of the excess credit is used; or

 3.3.2. The expiration of the 10th taxable year after the taxable year in which the annual salaries for the new direct job was paid or incurred. Any credit remaining thereafter is forfeited.

 3.4. Pass-through entities. -- The High-Wage Growth Tax Credit allowed to an eligible taxpayer that is a pass-through entity for federal and state income tax purposes, shall allocate allowable High-Wage Growth Business Tax Credits to its equity owners in the same manner as profits and losses are allocated for the taxable year. The equity owner may apply the credit against his or her West Virginia personal income tax liability for the taxable year. An equity owner that pays the tax imposed by W. Va. Code § 11-24-4 may apply the credits against its liability for that tax for the taxable year. This credit must be applied before all other tax credits are applied. An equity owner that has unused allocated High-Wage Growth Tax Credits may carry forward unused tax credit to a subsequent taxable year until the earlier of the following:

 3.4.1. The full amount of the excess credit is used; or

 3.4.2. The expiration of the 10th taxable year after the taxable year in which the annual salaries for the new direct job was paid or incurred. Any credit remaining thereafter is forfeited.

 3.5. Refund of unused credit. – Up to $100,000 of unused tax credits may be refunded to a corporation that pays the tax imposed by W. Va. Code § 11-24-4, when the corporation submits to the Tax Commissioner a timely claim for refund. When the corporation that applied for the credit is a member of an affiliated group or combined group of corporations and one or more other members of group applied for the High-Wage Growth Business Tax Credit, not more than $100,000 of unused credit may be refunded to members of the group. See W. Va. Code § 11-13II-4(m)(8).

 3.6. Tax credits provided in W. Va. Code § 11-13II-4 may not be transferred, sold, or assigned. See W. Va. Code § 11-13II-4(m)(9).

 3.7. High-Wage Growth Business Tax Credits may not be applied against employer withholding taxes payable under W. Va. Code § 11-21-*1 et seq*.

**§11-13II-4. False certification**.

 Any person who willfully submits a false, incorrect, or fraudulent certification required for the High-Wage Growth Business Tax Credit is subject to all applicable penalties in the West Virginia Tax Crimes and Penalties Act, §11-9-1 *et seq*., and the West Virginia Tax Procedures and Administration Act, §11-10-1 *et seq*., of this code, except that the amount on which the penalty is based shall be the total amount of credit requested on the application for approval.