



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Tax TITLE-SERIES: 110-13II
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 110-13II High-Wage Growth Business Tax Credit

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W.Va. Code §§11-10-5, 11-13II-5

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This proposed rule is within the Tax Commissioners statutory authority under W. Va. Code §11-10-5, §11-13II-5, and pursuant to W.Va. Code §29A-1-2(k) and §29A-3-1.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/22/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/22/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

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

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Since this is a new rule, there are no changes in an existing rule. the rule is required by the provisions of W.Va. Code §11-13II-5.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The loss of revenue to the General Revenue Fund would be up to \$5.0 million in FY 2022 and thereafter.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Additional administrative costs to the Tax Department would be \$35,000 in FY 2022 and \$10,000 in subsequent fiscal years.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The loss of revenue to the General Revenue Fund would be up to \$5.0 million in FY 2022 and thereafter.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	\$35,000.00	\$10,000.00
Personal Services	0	\$10,000.00	\$10,000.00
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	\$25,000.00	0
2. Estimated Total Revenues	0	-\$5,000,000.00	-\$5,000,000.00

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This legislative rule establishes and provides guidance for the High-Wage Growth Tax Credit. The Legislation provides a tax credit for eligible taxpayers creating high-wage jobs in coordination with the State Development Office and the State Tax Department. The maximum credit allotment is \$5.0 million per fiscal year and the total amount of the credit that may be awarded or used by an eligible taxpayer in any taxable year would not exceed 10 percent of the salaries for the new direct jobs. The tax credit benefit limitation would be higher than the maximum 6.5 percent tax rate imposed on employee salaries. The tax credit is available for 10 years; however, any unused credit can be carried forward to future years. Excess credit can also be claimed as a refundable credit, not to exceed \$100,000 per taxpayer, including owners and their controlled group, if applicable. The tax credit would first be applied to the eligible taxpayers Corporate Net Income Tax liability and then to their Personal Income Tax liability. The loss of revenue to the General Revenue Fund would be up to \$5.0 million in FY2022 and thereafter. Additional administrative costs to the Tax Department would be \$35,000 in FY2022 and \$10,000 in subsequent fiscal years.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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 its 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 to \$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.