



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Tax

RULE TYPE: Legislative

TITLE-SERIES: 110-13II

RULE NAME: HIGH-WAGE GROWTH BUSINESS TAX
CREDIT

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

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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.*, § 11-21-1 *et seq.*, and § 11-24-1 *et seq.*

§110-13II-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 credit 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 Credit may elect to have up to \$100,000 refunded as provided in section 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 jobs were 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 Credit 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 Credit 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 jobs were 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 taxpayer when the taxpayer submits to the Tax Commissioner a timely claim for refund. When the taxpayer is a pass-through entity or a corporation that is a member of an affiliated group or combined group of corporations, the \$100,000 limitation applies at the entity level. For example, if a pass-through entity has five members that share profits and losses equally, the potential refundable credit for each member is limited to \$20,000, and not \$100,000. Likewise, the total amount of refundable credit allowed to an affiliated or combined group of corporations is limited to \$100,000 for the entire group, and not \$100,000 per member 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.

§110-13II-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.