

Senate Bill No. 413

(By Senators Prezioso, Foster, Jenkins, Stollings, Barnes, Unger and Kessler)

[Introduced March 2, 2009; referred to the Committee on Finance.]



A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13Z-1, relating to providing a temporary tax credit for small group employers to cover fifty percent of the premium for the first year times the percentage of the employees' premiums that are paid by the employer; twenty-five percent of the premium for the second year times the percentage of the employees' premiums paid by the employer; establishing limits on the amount of the tax credit; establishing the order of taxes potentially receiving the tax credit; and determining that an employer must provide insurance coverage for three years to be eligible.

Be it enacted by the Legislature or West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13Z-1, to read as follows:

ARTICLE 13Z. SMALL BUSINESS TAX CREDIT.

§11-13Z-1. Tax Credit for Small Businesses.

(a) *Credit allowed.* -- There shall be allowed to each eligible small group employer with less than twenty-five employees a tax credit of up to fifty percent of the cost of their private health insurance benefit times the percentage of premium cost that is paid by the small group employer. An eligible employer must maintain its corporate headquarters in West Virginia and the tax credit is available for the taxable year in which the investment was made.

(b) No more than \$6 million of the tax credits allowed under subsection (a) of this section shall be allocated by the Governor's Office of Health System Improvement during any fiscal year. The Governor's Office of Health System Improvement shall allocate the tax credits in the order the applications are received.

(c) *Business franchise tax.* -- The tax credit is first applied to reduce the taxes imposed upon the eligible taxpayer by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(d) *Corporation net income taxes.* -- After application of subsection (c) of this section, any unused tax credit is next applied to reduce the taxes imposed upon the eligible taxpayer by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).

(e) If the eligible taxpayer is a limited liability company, an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), or a partnership, any unused tax credit remaining after

application of subsections (c) and (d) of this section is allowed as a tax credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer.

(1) Electing small business corporations, as defined in subsection (e) of this section, limited liability companies, and partnerships shall allocate the tax credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No tax credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(f) *Personal income tax taxes.* -- After application of subsections (c), (d) and (e) of this section, any unused tax credit is next applied to reduce the taxes imposed by article twenty-one of this chapter for the taxable year (determined before application of allowable credits against tax) of the eligible taxpayer.

(g) If the eligible taxpayer is a limited liability company, an electing small business corporation (as defined in subsection (e) of this section) or a partnership, any unused tax credit remaining after application of subsections (c), (d), (e) and (f) of this section is allowed as a tax credit against the taxes imposed by article twenty-one of this chapter on owners of the eligible taxpayer.

(1) Electing small business corporations, as defined in subsection (e) of this section, limited liability companies, and partnerships shall allocate the tax credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No tax credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(h) The total amount of tax credit that may be used in any taxable year by any eligible taxpayer in combination with the owners of the eligible taxpayer under subsections (e) and (g) of this section may not exceed \$25,000.

(i) The total amount of tax credit at fifty percent of the cost of the insurance times the percentage the small group employer pays of the total cost of the employees insurance may be used for one year; in year two only twenty-five percent of the cost of insurance times the percentage the small group employer pays of the total cost of the employees insurance may be used as a tax credit and in year three, no tax credit is available.

(j) *Unused credit carry forward.* -- If the tax credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subsections (c), (d), (e), (f) and (g) of this section for that taxable year, the eligible taxpayer and owners of eligible taxpayers described in subsections (e) and (g) of this section may apply the excess as a tax credit against those taxes, in the order and manner stated in this section, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess tax credit is used; or

(2) The expiration of the fourth taxable year after the taxable year in which the investment was made. The tax credit remaining thereafter is forfeited.

(k) No tax credit is allowed or may be applied under this article until the taxpayer seeking to claim the tax credit has:

(1) Filed with the Governor's Office of Health System Improvement a written application for the tax credit and required proof of eligibility;

and

(2) Received from the Governor's Office of Health Enhancement and Lifestyle Planning a certification of the amount of tax credit to be allocated to the eligible taxpayer.

NOTE: The purpose of the bill is to give a temporary tax credit to small business employers to assist in the purchase of health insurance for their employees.

This article is new, therefore underscoring and strike-throughs have been omitted.

This bill is recommended for passage by the Select Committee D on Health.