January 1988

The New Small Business Credit and Other Changes to Tax Incentives for Business Development in West Virginia

Harry Preston Henshaw III

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Taxation-State and Local Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol90/iss2/6

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
I. INTRODUCTION

Recently enacted tax incentives for business development in West Virginia are the centerpiece of the state’s effort to stimulate its business economy. Since their enactment, the tax incentives have been the subject of intense discussion and analysis. A number of significant changes were made in 1987, and it is these changes that are the subject of this article. Because the basic statutory scheme of the tax incentives was reviewed in detail in the author’s prior article, only a brief summary of the unchanged statutes is provided here. Reference should be made to that prior article for a detailed discussion of the unchanged provisions of the tax incentive statutes.

II. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT

A. Background

The most significant changes made to the tax incentives for business development in West Virginia were the amendments to the business investment and jobs expansion credit, often called the “super credit.” The super credit is available to a West Virginia business...
that acquires property as part of a new or expanded business and creates a minimum number of new jobs. The maximum credit is equal to the "qualified investment" times the "new jobs percentage."³ The qualified investment is the cost of the property acquired or constructed for expansion or revitalization adjusted for the useful life of the property.⁴ If the property's useful life is, for example, eight or more years, 100% of the cost is counted; if six to eight years, 66.6% is counted; if four to six years, 33.3% is counted; and if less than four years, 0% is counted.⁵

"The new jobs percentage is based on the number of new jobs created . . . that are directly attributable to the qualified investment . . . ."⁶ A new job is created only if three criteria are met: a new employee must be a resident of the state,⁷ he must assume a position which did not previously exist at the new or expanded facility, and the new position must be such that it would not have existed but for the investment.⁸ The new jobs percentage increases in 10% increments from 50% if there are fifty new jobs and to 90% if there are one thousand new jobs.⁹ To provide flexibility in determining the new jobs created and the qualified investment made, the tax commissioner may certify a project, which would otherwise not qualify, as eligible for the credit.¹⁰ Once the maximum amount of the credit is calculated by multiplying the new jobs percentage times the qualified investment, the amount of the credit is spread equally over ten years and can be applied against essentially all of the state taxes a business would pay.¹¹ Depending on the tax involved, the credit may offset or operate as a rebate of 80% of the tax (although the credit may only be applied as a rebate of 20% of workers' compensation premiums).¹² However, the super credit may only be taken

³. Id. § 11-13C-4(b) (1987).
⁴. Id. § 11-13C-6 describes the procedure for arriving at the qualified investment.
⁵. Id. § 11-13C-6(b) (1987).
⁶. Id. § 11-13C-7(a) (1987).
⁸. Id. § 11-13C-7(c) (1987) sets forth the criteria to determine whether an employee's position is attributable to the qualified investment.
⁹. Id. § 11-13C-7(b) (1987) sets forth the applicable new jobs percentages.
¹⁰. Id. § 11-13C-4b (1987) defines three general situations which will qualify as certified projects.
¹¹. Id. § 11-13C-4(c) (1987).
¹². W. Va. Code § 11-13C-5(b) to (k) (1987) sets forth the taxes against which the annual credit allowance may be taken.
against state taxes attributable to the new or expanded business.\textsuperscript{13} If the taxes attributable to the new investment cannot be readily determined, the taxes (except sales and use taxes) are allocated proportionately by comparing the compensation paid to the new employees to the compensation paid to all of the taxpayer's employees within West Virginia.\textsuperscript{14}

A specific headquarters relocation credit is allowed under the super credit.\textsuperscript{15} This credit has a minimum new job threshold of fifteen new employees instead of fifty new employees.\textsuperscript{16} If between fifteen and fifty new jobs are created, the new jobs percentage is 10%.\textsuperscript{17} The headquarters relocation credit allows the taxpayer to count as a qualified investment 100% of the cost of relocating its headquarters into the state.\textsuperscript{18}

\textbf{B. Small Business Credit}

Because of the threshold requirement of fifty new jobs for the super credit, it was impossible for smaller businesses to qualify for that credit; consequently, the same incentive for the development of smaller businesses did not exist. To remedy this, the super credit was expanded in 1987 by the addition of a new section providing for a "small business credit."\textsuperscript{19} Only businesses with either an annual payroll of $1,500,000 or less or annual gross sales of not more than $5,000,000 qualify as a "small business" eligible for the credit.\textsuperscript{20} The dollar limitations on a small business' annual payroll and gross sales are to be increased annually by a cost of living adjustment calculated from the consumer price index.\textsuperscript{21}

To be eligible for the small business credit, a small business taxpayer need only create a minimum of ten new jobs directly attrib-
utable to the "qualified investment." A qualified investment is defined and calculated in the same manner as the super credit. New jobs are likewise determined in the same manner as under the general provisions of the super credit, but it is not clear from the statute whether the payroll for the new jobs is included or excluded in determining whether a business exceeds the $1,500,000 payroll limitation to qualify as a small business. However, the State Tax Department has indicated that it will not include the payroll for new jobs created in the $1,500,000 limitation in the year in which the new jobs are created. If the payroll for new jobs increases a business' payroll over the limitation, any new jobs created in a subsequent year cannot be used to compute the new jobs percentage; consequently, the small business credit will not be increased. For example, a business that exceeds the sales limitation and that has a payroll of exactly $1,500,000 could create three new jobs; these three new jobs would increase the new jobs percentage and correspondingly increase the small business credit. But if two more new jobs were created in the next year, the two additional new jobs would not increase the new jobs percentage or affect the small business credit since the taxpayer no longer met the definition of a small business. However, the taxpayer will still be able to take the credit it obtained when it was an eligible small business. It should be noted that both the payroll limitation and the annual gross sales limitation have to be exceeded in order to disqualify a small business.

As under the general provisions of the super credit, investments made within three years of the initial qualified investment may be counted as a qualified investment if they are part of a project certified by the tax commissioner. However, employees who are not employees of the taxpayer or who are not working at the new or expanded facility may not be counted as part of a certified project.
even though such new jobs are directly attributable to the qualified investment. Such new jobs can be counted under the general provisions of the super credit if pursuant to a project certified by the tax commissioner.27

There are several restrictions on determining new jobs for the small business credit that were not applicable to the super credit in general. New employees must earn at least $11,000 per year on the average.28 Thus, although some of the employees filling the new jobs might earn less than $11,000, they could be counted as long as the average salary was at least $11,000. This $11,000 minimum will be adjusted annually for increases in the cost of living.29 Related individuals, as defined under 26 U.S.C. § 51(i) of the Internal Revenue Code, or persons who own 10% or more of the business may not be counted for purposes of determining the number of new jobs created.30 According to the State Tax Department, a new sole proprietor or partner, who cannot count his job as a new job, does not count his salary for purposes of the payroll limitation on a small business. Also, a taxpayer is specifically prohibited from counting as "new employees" individuals who worked for the taxpayer during the six months preceding the date on which the taxpayer placed his qualified investment in service.31 There is no such limitation under the general provisions of the super credit, although a "new employee" must fill a new position to be classified as a new job.32

If ten new jobs are created, the new jobs percentage is 30%; if more than ten new jobs are created, the new jobs percentage is increased by .5% for each new job over ten created, with the maximum new jobs percentage not to exceed 50%.33 The new jobs percentage is then multiplied by 10% of the qualified investment to

27. Id. § 11-13C-4b(a)(2) & (3) (1987).
28. W. Va. Code § 11-13C-7a(c) (1987) states that the "median compensation of such new jobs shall not be less than eleven thousand dollars per year. . . ."
29. Id.
30. Id. § 11-13C-7a(c)(1)(A) (1987).
31. Id. § 11-13C-7a(c)(1)(B) (1987).
32. Id. § 11-13C-3(b)(13) (1987) defines new employees for purposes of the super credit in general and this definition is incorporated by the provisions of the small business credit with the additional restrictions discussed.
33. Id. § 11-13C-7a(d)(1) (1987).
arrive at the maximum annual credit allowance available.\(^4\) As with the super credit in general, the small business credit is taken over ten years.\(^5\) However, for the super credit, if the number of new jobs decreases during the ten-year period in which the credit is taken, the new jobs percentage is recalculated, and the credit is correspondingly decreased.\(^6\) There is no provision for an increase of the general super credit if the number of new jobs increases. Under the small business credit, the number of new jobs is calculated each year, and the new jobs percentage is determined. The language of the statute is somewhat ambiguous, but the interpretation of the State Tax Department is that this percentage is then used to determine the credit available to the taxpayer in that year.\(^7\) In other words, the small business credit will vary each year depending upon the number of new jobs. Presumably, this was considered necessary since the new jobs percentage for the small business credit varies 5% for each new job, and the new jobs percentage for the super credit only varies according to broad brackets which are in excess of 200 new jobs.\(^8\) Therefore, a slight increase or decrease in the number of new jobs would not affect the new jobs percentage for the super credit unless the taxpayer happened to be at the break point between two brackets.

The small business credit is taken against the same taxes (i.e., business and occupation taxes, carrier income taxes, severance taxes, telecommunications taxes, business franchise tax, corporate net in-

---

34. *Id.* § 11-13C-7(a)(2) (1987).
35. *Id.* The small business credit is spread over ten years by dividing the qualified investment by ten to determine the maximum credit available for each year.
36. *Id.* § 11-13C-8(c) (1987).
37. *Id.* § 11-13C-7(a)(2) (1987) (emphasis added) states, Provided, that for purposes of estimating the new jobs percentage that will be applicable for each subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, taxpayer shall redetermine his allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year (determined on a monthly basis) created as the direct result of taxpayer's qualified investment.
38. *Id.* § 11-13C-7(b) sets forth the scale of new jobs percentages for the super credit in general; *Id.* § 11-13C-7(a)(1) sets forth the method providing for the calculation of the new jobs percentage for the small business credit.
come taxes, personal income taxes, sales and use taxes) and as a rebate of the same taxes (i.e., ad valorem property taxes, unemployment taxes and workers’ compensation premiums) as the super credit in general.\(^3\) The small business credit is available for qualified investments purchased or leased after June 30, 1987.\(^4\)

### C. Example of the Small Business Credit

Assume that in year one a new company is formed in West Virginia to manufacture wood panels for sale to furniture manufacturers in North Carolina. The company initially starts business with fourteen employees. Of these fourteen employees, one is a Virginia resident, and the Vice-President and President each own more than 10% of the stock in the new company. The company purchases a building and land for $175,000 with a useful life of more than eight years, machinery and equipment for $200,000 with a useful life of between six and eight years, and miscellaneous equipment for $50,000 with a useful life of between four and six years.

In year two, because its business has expanded, the company hires two more employees who are West Virginia residents. Pursuant to the company’s long range plan, in the third year the company hires five new employees and begins to manufacture a limited line of cabinets. The company makes an additional investment of $190,000 in equipment, which has a useful life of between six and eight years, as part of this expansion. Before the company filed its first tax return with the state, it applied to the tax commissioner for approval of this $190,000 investment as part of a certified project. Since this additional investment was a reasonable projection of the company’s future growth, the tax commissioner certified this project.

The qualified investment for purposes of computing the small business tax credit would be calculated as follows:

---

39. *Id.* § 11-13C-7a(b)(3) references the general provisions of the super credit for the application of the annual credit allowance.

40. *Id.* § 11-13C-7a(h).
<table>
<thead>
<tr>
<th>Cost of Property</th>
<th>Useful Life</th>
<th>Applicable Percentage</th>
<th>Qualified Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>175,000</td>
<td>8</td>
<td>100%</td>
<td>175,000.00</td>
</tr>
<tr>
<td>200,000</td>
<td>6 to 8</td>
<td>66 2/3%</td>
<td>133,333.33</td>
</tr>
<tr>
<td>50,000</td>
<td>4 to 6</td>
<td>33 1/3%</td>
<td>16,666.66</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Subtotal</strong></td>
<td><strong>$325,000.00</strong></td>
</tr>
<tr>
<td>190,000&lt;sup&gt;41&lt;/sup&gt;</td>
<td>6 to 8</td>
<td>66 2/3%</td>
<td><strong>$126,667.00</strong></td>
</tr>
</tbody>
</table>

Assuming that the number of new jobs created by the company remains constant after the third year, the new jobs percentage would be computed as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>.5% x New jobs in excess of 10&lt;sup&gt;42&lt;/sup&gt;</th>
<th>+ 30% =</th>
<th>New Jobs Jobs Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(1 x .5%)</td>
<td>+ 30% =</td>
<td>30.5</td>
</tr>
<tr>
<td>2</td>
<td>(3 x .5%)</td>
<td>+ 30% =</td>
<td>31.5%</td>
</tr>
<tr>
<td>3 to 12</td>
<td>(8 x .5%)</td>
<td>+ 30% =</td>
<td>34%</td>
</tr>
</tbody>
</table>

The maximum small business credit available to the company is calculated as follows:<sup>43</sup>

<table>
<thead>
<tr>
<th>Year</th>
<th>New Jobs Percentage Each Year</th>
<th>Qualified Investment Spread Over Ten Years</th>
<th>Credit Available Each Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>30.5%</td>
<td>x 32,500</td>
<td>= 9,913</td>
</tr>
<tr>
<td>2</td>
<td>31.5%</td>
<td>x 32,500</td>
<td>= 10,238</td>
</tr>
<tr>
<td>3</td>
<td>34%</td>
<td>x 45,167&lt;sup&gt;44&lt;/sup&gt;</td>
<td>= 15,357</td>
</tr>
<tr>
<td>4</td>
<td>34%</td>
<td>x 45,167</td>
<td>= 15,357</td>
</tr>
</tbody>
</table>

<sup>41</sup> Since the investment of the company in the third year is part of a certified project, it may be counted in computing the qualified investment of the company. W. Va. Code § 11-13C-7a(f) (1987).

<sup>42</sup> Neither employees who are not residents of West Virginia nor employees who own 10% or more of the business can be counted as new jobs. W. Va. Code § 11-13C-7a(c)(1)(A) (1987).

<sup>43</sup> See Henshaw, supra note 2, at Appendix Example 5 for a detailed illustration of how the annual credit allowance is applied against typical tax liability of a business.

<sup>44</sup> The qualified investment made in the third year is spread over a ten year period commencing when the property is placed in service. W. Va. Code § 11-13C-7a(b)(2) (1987).
New Jobs Percentage Each Year x Qualified Investment Spread Over Ten Years = Credit Available Each Year

<table>
<thead>
<tr>
<th>Year</th>
<th>New Jobs Percentage Each Year</th>
<th>Qualified Investment Spread Over Ten Years</th>
<th>Credit Available Each Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>34%</td>
<td>x 45,167</td>
<td>= 15,357</td>
</tr>
<tr>
<td>6</td>
<td>34%</td>
<td>x 45,167</td>
<td>= 15,357</td>
</tr>
<tr>
<td>7</td>
<td>34%</td>
<td>x 45,167</td>
<td>= 15,357</td>
</tr>
<tr>
<td>8</td>
<td>34%</td>
<td>x 45,167</td>
<td>= 15,357</td>
</tr>
<tr>
<td>9</td>
<td>34%</td>
<td>x 45,167</td>
<td>= 15,357</td>
</tr>
<tr>
<td>10</td>
<td>34%</td>
<td>x 45,167</td>
<td>= 15,357</td>
</tr>
<tr>
<td>11</td>
<td>34%</td>
<td>x 12,667</td>
<td>= 4,307</td>
</tr>
<tr>
<td>12</td>
<td>34%</td>
<td>x 12,667</td>
<td>= 4,307</td>
</tr>
</tbody>
</table>

Total Credit Allowable = $151,621

D. Other Changes

In addition to the creation of the new small business credit within the general provisions of the super credit, there were several other miscellaneous changes to the super credit. The definition of "business expansion" was broadened so that it is now clear that start-up costs and site preparation costs that are capitalized for federal tax purposes will be considered a qualified investment. In addition, the tax commissioner may now allow a taxpayer to "purchase" property from another member of its controlled group; this property can be counted as a qualified investment if it was purchased at its fair market value. Prior to this change, the statute prohibited qualifying any property purchased from a related party as an eligible investment.

The timing of the application for a certified project has been changed from any time prior to placing the qualified investment property into service to any time prior to the first return. Also, if new jobs are not created at the facility of the taxpayer or if the

45. Id. § 11-13C-3(b)(3) (1987) now defines business facility to include all site preparation and start up costs.
46. Id. § 11-13C-3(b)(20) (1987) defines an allowable "purchase" of property for "business expansion" for purposes of determining the qualified investment.
47. Id. § 11-13C-3(b)(2) (Supp. 1986) (amended 1987).
48. Id. § 11-13C-4b(b) (1987).
new jobs are not filled by employees of the taxpayer, the new jobs must be created within fifty miles instead of seventy-five miles of the new or expanded facility to qualify as a certified project.\textsuperscript{49}

Lastly, the super credit, the headquarters credit, and the small business credit may now all be taken against sales and use taxes of the taxpayer that are attributable to the new or expanded business.\textsuperscript{50} Formerly, the credit could not be taken against sales and use tax. The industrial expansion and revitalization credit, the research and development projects credit, and the coal loading facilities credit were amended so that these credits may also be taken against sales and use taxes.\textsuperscript{51}

\section*{III. Capital Company Credit}

\subsection*{A. Background}

The West Virginia Capital Company Act allows a taxpayer who invests in a "qualified West Virginia capital company" a credit against state taxes equal to 50\% of his investment in such company.\textsuperscript{52} A qualified West Virginia capital company is a corporation or partnership which has a minimum capitalization of $1,000,000, which has a maximum qualified capitalization of $4,000,000, and which was formed to make "qualified investments" with its capital as required by statute.\textsuperscript{53} After qualification, a capital company must make a qualified investment of at least 20\% of its capital base within one year, at least 40\% of its capital base within two years, and at least 60\% of its capital base within three years.\textsuperscript{54} There is no requirement that the remaining 40\% of a capital company's capital base be invested. Each qualified investment of a capital company must be

\begin{itemize}
  \item \textsuperscript{49} Id. § 11-13C-4b(a)(3) (1987).
  \item \textsuperscript{50} Id. § 11-13C-5(j) (1987).
  \item \textsuperscript{51} Id. § 11-13D-3a (1987); Id. § 11-13E-3a (1987).
  \item \textsuperscript{52} Id. § 5E-1-8(c) (1987) gives a credit against West Virginia taxes to any investor in a "qualified" West Virginia capital company.
  \item \textsuperscript{53} Id. § 5E-1-7 (1987) sets a minimum level of capitalization of $1,000,000 for a "capital company." W. Va. Code § 5E-1-8(a) (1987) establishes a $2,000,000 ceiling on the credits that may be extended to the investors in a single West Virginia capital company.
  \item \textsuperscript{54} Id. § 5E-1-12 (1987) sets forth the minimum qualified investment levels required of a West Virginia capital company.
\end{itemize}
continued for at least five years, but there is no requirement that the capital be invested for any further period. Any type of debt or equity investment may be a "qualified investment." However, a capital company is required to diversify its investment in that not more than 30% of its total capital may be invested in any one enterprise.

B. Changes

As originally enacted, the Capital Company Act broadly defined a qualified investment as an investment in a West Virginia business engaged in "[m]anufacturing; agricultural production or processing; forestry production or processing; mineral production or processing, except for conventional oil and gas exploration; transportation; research and development of products or processes associated with any of the activities previously enumerated above; tourism; and wholesale or retail distribution activities within the state." This list was expanded in 1987 by the addition of a West Virginia business engaged in the "service industry." Consequently, a qualified investment can now be made in almost any business except the few businesses which are specifically excluded.

As previously stated, an investor in a West Virginia capital company is allowed a credit equal to 50% of his investment, and the credit is available at the time the capital company is "certified" by the state. Certification of a capital company occurs after the minimum capital, i.e., $1,000,000 or more, has been raised and not at the time the qualified investments are made. The term "certification" was used interchangeably with "qualification" throughout the statute, which resulted in some speculation that there was a two step process of certification and then qualification. The Capital Company Act was amended in 1987, changing the term "certification" to "qualification" to remove any ambiguity.

57. Id. § 5E-1-4(d) (amended 1987).
58. Id. § 5E-1-4(d) (Supp. 1987).
59. Id. § 5E-1-7 (1987); Id. § 5E-1-6 (amended 1987) used the terms "certified" and certification.
The most significant amendment to the Capital Company Act involves the taxes against which the credit may be applied. Previously, the credit could only be taken against an individual’s personal income taxes, against a business’ business and occupation tax prior to July 1, 1986, and against a business’ corporate net income tax. Now the capital company credit may be taken against business and occupation taxes, carrier income taxes, severance taxes, telecommunication taxes, business franchise tax, corporate net income taxes, and personal income taxes. Any credit in excess of the taxpayer’s tax liability for the current year can be carried back three years for a refund and then forward fifteen years.

IV. REDUCED TAXES WITHIN ENTERPRISE ZONES

The Economic Development Act of 1985 as amended in 1986 authorized the establishment of “enterprise zones” within depressed areas of West Virginia. Businesses locating or expanding within these enterprise zones receive certain state tax reductions. To be designated as an enterprise zone, an area must be one of “pervasive poverty, unemployment and economic distress.” Specifically, the incentives for business within an enterprise zone are: building materials used in constructing or rehabilitating buildings and equipment purchased by a business for use in an enterprise zone are exempt from sales or use tax; a “qualified business” that purchases a motor vehicle from a seller in an enterprise zone receives a 50% reduction in the motor vehicles privilege tax; qualified businesses are allowed a credit equal to their unemployment compensation taxes against corporate net income taxes or personal income taxes; and a business may carry forward its net operating losses for the life of the enterprise zone. Under prior law, state taxes on interest from loans made to qualified businesses and interest from mortgage loans on property within an enterprise zone were reduced by 50%. This 50%
reduction in taxes on interest was changed so that now a credit is given to a qualified business equal to 50% of its interest expense on money borrowed to purchase inventory, real property, or tangible personal property located within the enterprise zone.\textsuperscript{67} This credit may be taken against carrier income taxes, the business and occupation taxes, telecommunication tax, severance tax, personal income taxes, and corporate net income taxes. The credit must be applied against the foregoing taxes in the order stated and is limited to the amount of such taxes payable; any credit unused in any taxable year is forfeited.\textsuperscript{68} This is a significant change since, under prior law, the 50% reduction in taxes on the interest was extended to the lender and now the tax benefits have been transferred to the business operating within the enterprise zone.

As originally enacted, the statute provided that not more than two enterprise zones could be designated in 1987, two in 1988, two in 1989, and one in 1990.\textsuperscript{69} The statute was amended to provide that not more than five enterprise zones could be designated in each of the three years, 1987, 1988, 1989, and that in 1990 not more than three enterprise zones can be designated.\textsuperscript{70} Also, under the prior statute, an enterprise zone was the area of a city, county, or state which had a "continuous boundary."\textsuperscript{71} Now an enterprise zone is an area which "[h]as a continuous boundary or consists of non-contiguous tracts commonly owned by a municipal or county government or a local development authority."\textsuperscript{72} This will allow the enterprise zone authority more flexibility in delineating enterprise zones and should make it easier to meet the specific requirements for such zones.

V. Conclusion

The most significant tax incentive for business development in West Virginia has been the super credit. Because a business had to

\textsuperscript{67} Id. § 5B-2B-5(1) (Supp. 1987).
\textsuperscript{68} Id.
\textsuperscript{69} Id. § 5B-2B-9(a) (amended 1987).
\textsuperscript{70} Id. § 5B-2B-9(a) (Supp. 1987).
\textsuperscript{71} Id. § 5B-2B-8(a)(1) (amended 1987).
\textsuperscript{72} Id. § 5B-2B-8(a)(1) (Supp. 1987) sets forth the conditions for the designation of an enterprise zone.
create at least fifty new jobs in order to be eligible for the super credit, however, only a limited number of large businesses making a major expansion within the state could qualify. The new small business credit provides a credit of 30% to 50% of the qualified investment if ten to fifty new jobs are created, so this credit should provide a significant incentive for the expansion of small to medium size businesses in West Virginia. Since the creation of ten new jobs should be within reach of a large number of businesses whereas the super credit is only available to a very limited number of large corporations, the state may find the cumulative effect of the small business credit to be greater than that of the super credit.

The first enterprise zones should be designated by the time of the publication of this article, but there has been no practical experience with this tax incentive to date. The increase in the number of enterprise zones that may be created will allow the enterprise zone authority to extend this tax benefit to more severely depressed areas, which should have a positive economic effect. Similarly, although several capital companies have been formed as of this writing, the state-wide limitation on capital company credits available in any one year has not been reached. The increase in the number of taxes against which the capital company credit can be applied should increase the interest in capital companies as will the experience of those who have already participated in such companies.

Although the changes to the tax incentives for business development made in 1987 are significant, probably more important than the specific statutory amendments is that the changes show a continued commitment on the part of the state to provide a tax environment that is conducive to attracting new business. There seems to be no retreat from this commitment even though the state is under considerable pressure to find additional revenue. Businesses looking at West Virginia’s tax structure should feel that the trends in the state as well as the present tax incentives are favorable for business development.