WEST VIRGINIA TAX CREDIT REVIEW AND ACCOUNTABILITY REPORT

Economic Opportunity Tax Credit
Manufacturing Investment Tax Credit

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EXECUTIVE SUMMARY

West Virginia Law requires a triennial tax credit review and accountability report evaluating the cost effectiveness of three separate investment tax credit programs: (1) The Economic Opportunity Credit (Opportunity Credit); (2) The Strategic Research and Development Tax Credit (Research Credit); and (3) The Manufacturing Investment Tax Credit (Manufacturing Credit). The first evaluation report, issued in 2006, contained minimal feedback due to the lack of significant data on the new investment tax credit programs. With more extensive historical information now available, recent reports provide a broader evaluation of these tax credit programs.

Statutory changes enacted in recent years altered some of the tax credit programs. These changes included a temporary venture capital tax credit, called the High-Growth Business Investment Tax Credit, for investors who invested in qualified small research and development companies between July 2005 and June 2008 and a temporary refundable tax credit option available to qualified small research and development firms related to Research Credit investments made between July 2004 and December 2007. Opportunity Tax Credits were made available under slightly modified rules to qualified high-technology manufacturers in 2007 and qualified businesses creating fewer than 20 new jobs in 2008. Finally, the Legislature repealed the Research Credit effective January 1, 2014.

In addition, the Legislature enacted comprehensive business tax reforms between 2006 and 2008, which have further altered the business tax structure. These changes include the phase-out of the Business Franchise Tax by 2015, required mandatory combined reporting for unitary corporations beginning in 2009, a nonrefundable tax credit equal to local West Virginia property taxes paid on manufacturing inventory beginning in 2009, and a gradual reduction of the Corporation Net Income Tax rate from 9.0 percent to 6.5 percent by 2014. Beginning in 2022, the multi-state business entity income apportionment formula was altered from a three-factor formula based on property, payroll, and sales to a single sales factor formula based on sales.

The 2024 report provides updated fiscal information on both the Opportunity Credit and the Manufacturing Credit for the period between 2015 and 2021.[1] The Research Credit is omitted from this report because this program was terminated at the end of 2013 and little new information is available since the 2018 evaluation report.[2] Recent costs of these programs follow in Table 1.

[1] The statutes necessitating this triennial review require only the most recent three years for which information is available. This report includes a total of seven years to provide some context of recent trends in these credit programs. Analyses of credits for older taxable periods can be referenced in prior Tax Credit Review and Accountability reports.
[2] Due to expiration of the Strategic Research and Development Tax Credit, there has been no significant additional cost or benefits from this credit program in recent years. For this reason, any further analysis of this credit is generally omitted from this report.

Table 1 – Costs of Investment Tax Credit Programs Tax Years 2015 – 2021

Tax Year	Opportunity Credit	Manufacturing Credit	Total
2015	$2,702,500	$3,923,696	$6,626,196
2016	$3,780,150	$4,441,885	$8,222,035
2017	$3,356,252	$3,746,659	$7,102,911
2018	$6,736,658	$3,390,563	$10,127,221
2019	$11,364,946	$3,291,043	$14,655,989
2020	$15,042,563	$3,405,574	$18,448,137
2021	$17,525,314	$3,515,988	$21,041,302

Data indicates that the average annual cost of the Opportunity Credit program was roughly $8.6 million from tax years 2015 to 2021 while the average annual cost of the Manufacturing Credit was nearly $3.7 million for this period. Other major report findings include:

- Employees of firms receiving tax credit benefits generally benefit from employer-provided health insurance and pension plans.
- The amount of tax credit claimed on tax returns will generally be less than the amount of available tax credit due to the tax liability limits of the Taxpayer.
- The credit programs may help some individual business Taxpayers, but the overall impact of the credit programs on economic growth is modest at best.
- The cost of the business tax credit incentive programs is relatively small in comparison to both the overall state budget and other state and local tax expenditures.
- Business tax credits complicate the Tax Code and result in additional compliance costs for Taxpayers and additional administrative costs for the State Tax Department.
- The West Virginia State tax burden for the manufacturing sector is generally competitive with surrounding states because of the 60 percent tax break offered by the Manufacturing Credit. Local taxes are not part of this equation.
- Local taxes are a larger potential impediment to economic growth than are West Virginia State business taxes. Local property taxes on machinery and equipment represent a significant component of the total tax costs for West Virginia manufacturing businesses. Investment tax credits for the manufacturing sector offset a small portion of these total State and local tax costs.
- As the Opportunity Credit and Manufacturing Credit programs have matured, compliance with the respective tax credit application requirements has improved.
- Despite efforts to streamline the reporting process for the applications, schedules, and other forms required to evaluate and administer these credit programs, there always exists the possibility that some paperwork can be separated from the return a Taxpayer files. Tax returns, particularly those for corporate taxpayers, often exceed 100 pages. Given that these programs have annual filing requirements for supplementary forms to ascertain

credit availability, penalties for failure to timely file applications or schedules are sometimes imposed. This constrains the State Tax Department's efforts to timely measure accountability of these credit programs.

INTRODUCTION

In 2002, the Legislature created three new tax credit programs applicable to investment placed in service or use on or after January 1, 2003: the Opportunity Tax Credit, the Research and Development Tax Credit, and the Manufacturing Credit. In 2004, an additional new credit, the temporary High-Growth Business Investment Tax Credit, was enacted with a scheduled termination in 2008.

The enacting legislation for each of the aforementioned credits includes provisions for the State Tax Commissioner to submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a triennial tax credit review and accountability report evaluating the cost effectiveness of each tax credit program. The first report was due February 1, 2006, with subsequent reports due on February 1 every third year thereafter, and covered credits related to tax years ending in 2003. Subsequent reports have covered the period beginning with Tax Year 2003 and ending with the taxable year completed three years prior to report publication. This report covers credits related to tax years 2015 through 2021.

DATA NOTES

For consistency, data in this report is organized by tax year. A tax year refers to the year in which a Taxpayer's filing period began (e.g., a filing period of October 1, 2021, to September 30, 2022, would be referred to as Tax Year 2021). The first day of a taxable period can vary throughout the year so organizing these data by Tax Year provides uniformity in the analysis. This report focuses on credits claimed from Tax Year 2015 to Tax Year 2021. Although the statutory due dates[3] of Tax Year 2022 returns occurred before analysis for this report concluded, many Taxpayers use an automatic six-month extension before filing final returns with credit claims. These returns are currently under review and being processed by the State Tax Department.

Due to the complex nature of some tax returns, some of those filed for more recent tax years covered in this report have yet to be fully processed. For this reason, statistical results for these data do not represent complete records of credit claims. Tax returns can generally be amended through the third year following the original due date of the return, but older years can also be amended if opened for audit (e.g., by the Internal Revenue Service). It is important to note that credit claims as provided in the tables and figures of this report may be subject to revision via amendment by the Taxpayer or upon audit by the State Tax Department.

Data for this report is generally extracted from tax credit application forms, tax credit schedules, and tax returns. Finalized changes resulting from tax audits and other review efforts by the Department are incorporated in the results to the extent possible. **It is important to note, however, that all data are subject to change.** Given that analysis for this report concluded in January 2024, any adjustments to tax credits occurring after that date, even for older taxable periods, would alter the number of claims and aggregate amounts reported in this document.

A description of the two investment tax credits subject to evaluation in this report follows. Copies of tax credit applications and schedules for these and other West Virginia tax credits may be found

[3] Tax Year 2022 due dates were March 15, 2023, for Pass-Through Entities treated as a partnership for federal and state income tax purposes and April 18, 2023 for C-Corporations and limited liability companies that elect to be treated as a corporation for federal and state income tax purposes.

on the West Virginia State Tax Department website.[4] Unless otherwise specified, West Virginia employment and wage data used to characterize labor force statistics obtained from credit applications is supplied by Workforce West Virginia.[5]

[4] http://tax.wv.gov/Pages/default.aspx
[5] http://workforcewv.org/

ECONOMIC OPPORTUNITY TAX CREDIT

The intent of the Opportunity Credit, as stated in Section 11-13Q-2 of the West Virginia Code, is as follows:

> "The Legislature finds that the encouragement of economic opportunity in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage greater capital investment in businesses in this state and thereby increase economic opportunity in this state, there is hereby enacted the economic opportunity tax credit."

In order to claim the Opportunity Credit, eligible Taxpayers must create a minimum number of new jobs. With the termination of the Business Investment and Jobs Expansion Tax Credit (Super Credit), the Opportunity Credit is West Virginia's primary job creation tax incentive. The major enhancement of the Opportunity Credit, compared to the Super Credit, was a reduction in the number of new jobs required to qualify for the credit from 50 to 20.

As enacted in 2002 and applicable for tax years beginning on or after January 1, 2003, the Opportunity Credit has three components that assist in determining qualification:

1. A requirement that qualifying Taxpayers create at least 20 new jobs.

2. A requirement directed toward small businesses, that qualifying Taxpayers create at least 10 new jobs.

3. A requirement directed toward corporate headquarters relocation, that businesses establish headquarters in West Virginia and create at least 15 new jobs.

Two additional components, the specified high-technology manufacturer, and additional jobs options, were added in 2007 and 2008, respectively.

The criteria for the review and accountability report for the Opportunity Credit, as stated in W. Va. Code §11-13Q-20, are as follows:

- The number of taxpayers claiming the credit.
- The net number of new jobs created by all taxpayers claiming the credit.
- The cost of the credit.
- The cost of the credit per new job created.
- Comparison of employment trends for an industry and for taxpayers within the industry that claim the credit.

The Opportunity Credit can be used to offset liabilities for the Business and Occupation Tax, Business Franchise Tax (prior to termination), Corporation Net Income Tax, and Personal Income Tax.[6] Since electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations can allocate credit among the members, the count of

[6] Due to Taxpayer confidentiality, a breakout of Opportunity Credit claims by year and by tax type is not provided as there are insufficient numbers of Business and Occupation Tax and Personal Income Tax credit offsets year-to-year to permit disclosure.

taxpayers claiming the credit is greater than the number of businesses that made the investment and created the jobs.

The Opportunity Credit may be claimed by the Taxpayer over a 10-year period. Thus, taxpayers that made qualifying investments in tax year 2015 would be entitled to claim an annual allocation of the credit for tax years 2015 through 2024. There is also a three-year credit carryover provision that could extend the application of the tax credit for up to 13 years. Table 2 provides counts of taxpayers claiming the Opportunity Credit and aggregate associated cost to the State from tax years 2015 to 2021. The number of taxpayers claiming the credit is not additive since some taxpayers are included in the counts for multiple years.

Table 2 – Opportunity Tax Credit Claims and Cost

Tax Year	Claimants	Cost
2015	11	$2,702,500
2016	13	$3,780,510
2017	11	$3,356,252
2018	15	$6,736,658
2019	15	$11,364,946
2020	11	$15,042,563
2021	8	$17,525,314

Data is subject to change.

Provisions in the Opportunity Tax Credit Law require the credit claimant to certify the actual number of new jobs created in West Virginia that are directly attributable to the qualified investment with the annual tax return filed for the third taxable year in which the qualified investment was placed in service or use. Such information is collected on the Schedule for Opportunity Tax Credit (form WV/EOTC-1). Where the WV/EOTC-1 for the third tax year was not readily available, the new job information was extracted from the Application for Opportunity Tax Credit (form WV/EOTC-A) filed by the claimant.

By Law, a taxpayer must create a minimum number of new jobs (typically 20) by the third year following the initial placement of qualified investment into service. For example, if Company ABC makes a qualified investment in 2017, the company must attain the required number of new jobs by 2019, the third year, for ongoing entitlement to benefit from the Opportunity Tax Credit. If the minimum number of new jobs is not attained at that time, all prior year claims to Opportunity Tax Credit from the qualified investment are subject to recapture and no ongoing tax credit benefit remains in place. In any year after the third year that employment gains fall below the required minimum, tax credit benefits are forfeited for such year.

However, total employment levels for any Taxpayer may fluctuate significantly from one year to the next due to general economic conditions. If the Taxpayer maintains the minimum number of new jobs (typically 20 for nearly all applicants) over each year of the remaining 10-year period of tax credit application beyond the third year of actual employment gain measure, the annual tax credit benefit is retained. Therefore, total net employment gains in any single year for all Taxpayers claiming the Opportunity Tax Credit may be higher or lower than the collective number of certified new jobs attained in the third year by this group of Taxpayers.

In some cases, Taxpayers had increases in jobs and investments that qualified for multiple levels of the credit. For example, if a business created 20 or more new jobs over one three-year period and then created 20 or more new jobs over a subsequent three-year period, the Taxpayer would be entitled to a separate Opportunity Credit for each three-year period in which at least 20 jobs were created.

As part of the data collected via the WV/EOTC-A, applicants were asked to provide information on health plans and retirement plans provided to employees. Table 3 summarizes information reported on those Applications on which Taxpayers provided the requested data. The values in this table exclude missing values from the calculations.

Table 3 – Benefits Provided by WV Opportunity Credit Businesses

	Health Plan	Retirement Plan
Opportunity Credit businesses providing 100 percent coverage	53.3%	52.2%
Weighted percentage of new jobs covered	48.9%	39.4%
Weighted average cost of benefit per employee	$7,525	$4,046

When considering employment trends for the manufacturing industry compared to Taxpayers within the manufacturing industry that claim the Opportunity Credit, it is important to note that the number of claimants relative to the total population of Taxpayers is relatively small. Therefore, employment trend analysis regarding Opportunity Credit recipients will be omitted from this report. The State Tax Department monitors all Opportunity Credit claimants to ensure that the statutory job creation requirements are met over the life of the tax credit benefit. Taxpayers who fail to meet the job creation requirements set forth in the Statute lose their entitlement to the Opportunity Credit for any year of non-compliance. It is important to note that, while efforts are made to verify these numbers, employment data is self-reported by taxpayers.

MANUFACTURING INVESTMENT TAX CREDIT

As stated in Section 11-13S-2 of the West Virginia Code, the intent and purpose of the Manufacturing Credit is as follows:

> "The Legislature finds that the encouragement of the location of new industry in this state, and the expansion, growth and revitalization of existing industrial facilities in this state is in the public interest and promotes the general welfare of the people of this state."

This credit essentially replaced the Industrial Expansion and Revitalization Credit (WV/IERC) for manufacturers. The WV/IERC was retained only for electric power producers.

The criteria for the review and accountability report for the Manufacturing Credit, as stated in W.Va. Code §11-13S-10, are as follows:

- The numbers of taxpayers claiming the credit.
- The net number, type, and duration of new jobs created by all taxpayers claiming the credit and the wages and benefits paid.
- The cost of the credit.
- The cost of the credit per new job created.
- Comparison of employment trends for an industry and for taxpayers within the industry that claim credit.

The Manufacturing Credit essentially replaced the WV/IERC. One common feature of the two credits was that the total credit attributable to a qualifying investment was to be allocated evenly over a 10-year period. For example, investments qualifying for the Manufacturing Credit made in Tax Year 2015 would provide an annual credit available for offset for tax years 2015 through 2024. Since many manufacturers make annual upgrades to machinery and equipment, the available credit is often attributable to 10 different investment years.

The Severance Tax on timber, limestone and sandstone was terminated on July 1, 2019. Since limestone and sandstone producers were the primary severance taxpayers claiming the Manufacturing Credit against their Severance Tax liabilities, there are no more claims or credits pertaining to this tax after 2019 as seen in Table 4 below.

Table 4 – Manufacturing Credit Claims by Tax Type

Tax Year	Credit Claims: CNIT		Credit Claims: SEV		Total Claims	
	Count	Amount	Count	Amount	Count	Amount
2015	38	$3,245,524	10	$678,172	48	$3,923,696
2016	34	$3,951,793	10	$490,092	44	$4,441,885
2017	32	$3,290,999	9	$455,660	41	$3,746,659
2018	33	$2,954,905	9	$435,658	42	$3,390,563
2019	31	$3,007,561	9	$283,482	40	$3,291,043
2020	27	$3,405,574	0	$0	27	$3,405,574
2021	33	$3,515,988	0	$0	33	$3,515,988

Table 5 – Average Manufacturing Credit Claimed for Tax Years 2015 Through 2021

Tax Year	Total Manufacturing Credit Claimed	Count	Average Manufacturing Credit Claimed
2015	$3,923,696	48	$81,744
2016	$4,441,885	44	$100,952
2017	$3,746,659	41	$91,832
2018	$3,390,563	42	$80,728
2019	$3,291,043	40	$82,276
2020	$3,405,574	27	$126,132
2021	$3,515,988	33	$106,545

Data is subject to change. The Severance Tax was eliminated for limestone and sandstone producers beginning on July 1, 2019

Although job creation is not a requirement for the Manufacturing Credit, information on new jobs is part of the report criteria. Like the previous credits included in this report, potential Manufacturing Credit claimants were required to file an Application for West Virginia Manufacturing Investment Tax Credit (WV/MITC-A) before claiming the credit. Based upon information from the WV/MITC-A, the number of new jobs created, as reported by taxpayers applying for this credit, is shown in Table 6. It is important to note that, while efforts are made to verify these numbers, employment data is self-reported by taxpayers.

Table 6 – Change in Employment of West Virginia Manufacturing Credit Applicants

Tax Year	Prior to Investment	Year Investment Placed in Service	Net Change
2015	14,021	14,715	694
2016	11,283	11,412	129
2017	13,357	14,838	1,301
2018	12,380	12,472	92
2019	8,134	9,970	1,836
2020	11,004	11,261	257
2021	6,921	7,085	164

The largest single-year increase in this period (1,836 jobs) was reported in Tax Year 2019. The number of new jobs created is inflated somewhat by jobs created by taxpayers who also qualify for the Opportunity Credit. Many manufacturers make annual upgrades to machinery and equipment and therefore submit a new WV/MITC-A each tax year.

Reinvestment is critical to the long-run survival of any manufacturing facility. Increasing productivity in a globally competitive environment tends to limit growth in manufacturing employment. The employment numbers provided by manufacturing credit recipients in Table 7 indicate overall employment stability for this group of taxpayers.

Table 7 – Statewide Manufacturing Employment [7]

Year	Total Manufacturing Employment	Change in Manufacturing Employment
2015	47,692	-0.4%
2016	46,858	-1.7%
2017	46.692	-0.4%
2018	46,975	0.6%
2019	47,092	0.2%
2020	44,558	-5.4%
2021	45,367	1.8%
2022	46,192	1.8%

As part of the data collected in the WV/MITC-A, applicants were asked to provide information on health plans and retirement plans provided to employees. Table 10 summarizes information reported on the WV/MITC-A. While employment, health plan, and retirement data requested on applications are generally completed by most businesses, a few were filed with one or more data elements missing. The values in the following table exclude applications with missing data for the benefits from the calculations.

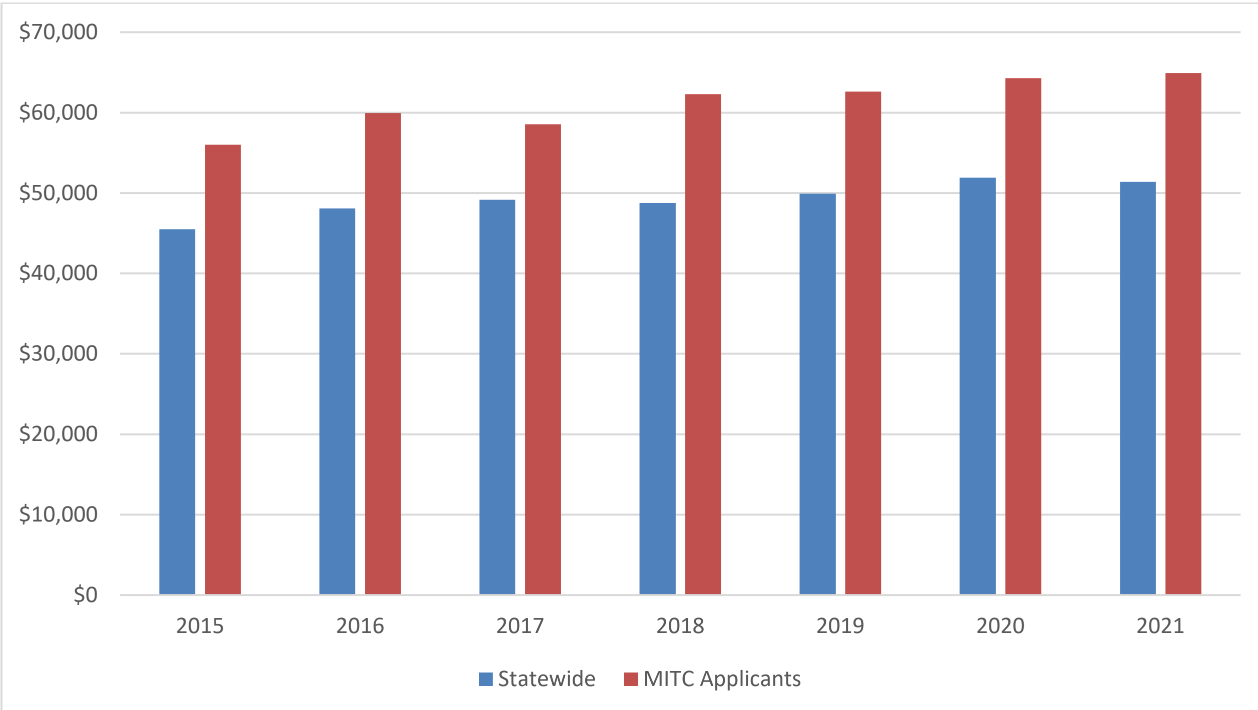
Table 8 – Benefits Provided by Manufacturing Credit Businesses

	Health Plan	Retirement Plan
Manufacturing Credit businesses providing 100 percent coverage	37.6%	44.0%
Weighted average cost of benefit per employee	$11,925	$4,048

The final criterion for West Virginia Manufacturing Credit analysis is a comparison of employment trends for the industry and for taxpayers within the industry that claim the credit. As shown in Graph 1, the average wage of employees of applicants for the Manufacturing Credit was greater than the statewide average wage for all manufacturing jobs for all periods covered by this report. On average, between tax years 2015 through 2021, the wages reported by Manufacturing Credit applicants were 24.3% higher than the statewide average. The highest deviation in wages occurred in Tax Year 2018, where the average wage reported of $62,309 per year by Manufacturing Credit applicants was 26 percent higher than the statewide wage average of $48,776 per year. Part of the deviation may be attributed to incomplete wage information from Manufacturing credit applicants.

[7] Source: Annual Report on the Civilian Labor Force, Employment, and Unemployment
From the U.S. Bureau of Labor Statistics (BLS) at https://www.bls.gov/news.release/laus.t04.htm

Graph 1 - Average Manufacturing Wages Statewide and Among West Virginia Manufacturing Credit Applicants for Tax Years 2015 Through 2021[8]



8 Statewide average annual manufacturing wages retrieved from the U.S. Bureau of Labor Statistics and Federal Reserve Bank of St. Louis.

CONCLUSION

Since the enactment of various new tax credit programs in 2002, West Virginia policymakers greatly altered State tax policy with greater emphasis on broad-based tax relief rather than tax preferences for select businesses. The broad-based tax relief included the phase-out of the Business Franchise Tax and the reduction in the Corporation Net Income Tax rate from 9.0 percent in 2002 to 6.5 percent by 2014. These changes effectively lowered the potential future offset value of tax credits, including those covered in this report.

A relatively low number of applications for the Opportunity Credit is likely attributable to several factors, including the complex filing and job creation requirements. The Manufacturing Credit program, which applies to a similar subset of taxpayers and does not require employment creation, is a reasonable substitute for many businesses. For the period covered by this report, employment by manufacturers fell slightly from 47,092 in 2015 to 46,192 in 2022 while employment in non-manufacturing sectors reported only modest gains.

In some cases, taxpayers filing an application and making the necessary investment or expenditure to gain entitlement to either the Opportunity Credit or Manufacturing Credit did not use any of the credit due to outstanding credit allowances for other credits, including terminated credits or the lack of taxable income and pre-credit tax liability. The presence of these alternative credits could impact on the use of the credits reviewed in this report.