Schedule EOTC-1

INSTRUCTIONS FOR ECONOMIC OPPORTUNITY TAX CREDIT (FOR PERIODS AFTER JANUARY 1, 2015)

General Information

The purpose of the Economic Opportunity Tax Credit is to promote net employment growth within West Virginia. In return for net employment growth (e.g., twenty (20) new jobs) through capital investment, the State provides a tax credit to offset the additional taxes directly attributable to the qualified investment and new jobs.

The Economic Opportunity Tax Credit is available to qualified businesses that make a qualified investment (on or after January 1, 2003) in a new or expanded business in West Virginia and, as a result of this investment, create at least twenty (20) new jobs. *Qualified business include only those engaged in the activities of manufacturing, information processing, warehousing, non-retail goods distribution, qualified research and development, the relocation of a corporate headquarters, or destination-oriented recreation and tourism.*

Application for Credit Required

Taxpayers must complete an Application for West Virginia Economic Opportunity Tax Credit (Form WV/EOTC-A) with the Tax Commissioner and receive written acknowledgment of such application prior to claiming the credit. The application must be filed annually no later than the due date of the taxpayer's annual income tax return determined with regard to any extension of time for filling such returns. Form WV/EOTC-A must be filed on a timely basis before claiming tax credits. Failure to do so will result in forfeiture of 50% of the annual credit allowance utilized until the application is filed.

Certified Projects

The Economic Opportunity Tax Credit may be claimed for a project certified by the Tax Commissioner. A project eligible for certification is one in which:

The qualified investment creates at least twenty (20) new jobs but such investment is placed in service or use over a period of three (3) successive tax years rather than a period of 365 days or less. The investment is eligible for project certification only if made in accordance with a written business facility development plan, and the investment placed in service or use during the first year would not have been made without the expectation of making the qualified investment placed in service or use during the next two (2) succeeding tax years.

A qualified business creating at least twenty (20) new jobs within three (3) tax years is allowed a credit equal to 20% of its qualified investment. This percentage increases with the number of new jobs created. A business creating at least 280 new jobs is allowed a credit equal to 25% of its qualified investment, and a business creating at least 520 new jobs can claim 30% of its qualified investment. For projects having qualified investment of $20 million or more that are constructed using construction labor and mechanics numbering 75 or more employees or equivalent employees, who are paid an average wage of at least prevailing wage; the new jobs percentage for the 20 to 520 employee range is increased by 5 percentage points.

If New West Virginia Jobs Total at least:	The Applicable Percentage is:
520	30%
280	25%
20	20%
15 Corporate headquarters relocation only	10%
10 Small business credit (see below)	10%

Jobs Calculation

The new jobs percentage is based on the number of new jobs created in this State that are directly attributable to the qualified investment in a new or expanded business facility. The number of new jobs created by the investment is determined by the net increase in employment by the business (or controlled group of businesses) in West Virginia over a base year level. The base year is the 12-month period immediately preceding the placement of qualified investment into service or use. The hours of qualified part-time employees may be aggregated to determine the number of equivalent full-time employees for the purpose of ascertaining the number of new jobs created.

A "New Job" is one that did not exist in the business of the taxpayer in this State prior to the investment in the new or expanded business facility. This position must be filled by a new employee. The number of new jobs is the net of new jobs created less any jobs lost in any part or segment of the employer's business in West Virginia over the same time period.

A "New Employee" is a West Virginia domiciled resident hired to fill one of the new jobs on a permanent basis. Temporary or seasonal employment does not qualify as a new job. Persons hired on a temporary or seasonal basis do not qualify as new employees.

For all Economic Opportunity Tax Credit applications, except small business, an estimation of the expected number of new jobs is made in the first taxable year for which the credit is claimed. In the third tax year the actual number of new jobs

created must be certified by the business. Adjustments must be made for the new jobs percentage if the number of new jobs certified varies from the number of new jobs estimated. The allowable credit is then redetermined for prior and future years. Once certified, if the number of new jobs declines in any tax year, resulting in a decreased new jobs percentage, the credit is redetermined. However, if the number of new jobs subsequently increases to the former threshold, the credit will be reinstated.

A qualified small business with no more than $9,233,450* in annualized sales must create at least ten (10) new West Virginia jobs within twelve (12) months of placement of qualified investment into service or use. See administrative notice 2014-22 for tax years beginning during calendar year 2015. If the number of new jobs declines in any subsequent year below the minimum of ten (10), then the credit is lost for that year. However, if the number of new jobs subsequently increases to the former threshold, the credit will be reinstated. If the new number of new jobs rises to twenty (20) or more, then the new jobs percentage will increase to twenty percent (20%), and the general job calculation rules of the Economic Opportunity Credit will apply.

A job is attributable to the qualified investment if:

1. The employee's service is performed or his base of operations is at the new or expanded facility; and
2. The position did not exist prior to the making of the investment in the new or expanded facility; and,
3. The position exists only because of the investment in the new or expanded facility.

Calculation of Full-Time Equivalent Employees

The hours of qualified part-time employees are aggregated to determine the number of equivalent full-time employees for the purpose of determining the applicable new jobs percentage. However, they may not be aggregated for the purpose of determining when a job is attributable to the qualified investment.

Part-time employment qualifies if the employee works at least twenty (20) hours per week for at least six (6) months or 520 hours per year (26 weeks @ 20 hours per week). Full-time employment is 140 hours per month or 1,680 hours per year (140 hours times 12 months). The following example illustrates a calculation of full-time equivalent employees:

Qualified Employees	Full-Time Equivalent	Net Full-Time Equivalent
200 @ < 520 hrs	1,680	Do not Qualify*
50 @ 750 hrs	1,680**	= 22.32
20 @ 1,500 hrs	1,680**	= 17.86
6 @ 1,700 hrs	1,680***	= 6.00
4 @ 2,080 hrs	1,680***	= 4.00
Total Net Full-time Equivalent Employees		= 50.18

* Must work for at least 6 months at 20 or more hours per week to qualify

** These employees work at least 20 hours per week for at least 6 months during the year

*** Hours beyond 1,680 may not be counted as additional employees.

Required Employment Records

The taxpayer must maintain records to establish the following:

1. Total full-time equivalent employment in place during the year immediately preceding the year qualified investment was first placed into service or use.
2. Total full-time equivalent employment in place during each year of the project.

Such records must be retained for a period of three (3) years after the last year for which the credit is claimed.

Qualified Investment Property

Qualified investment property is property constructed, purchased, leased or transferred into West Virginia and placed in service or use, as a component of a new or expanded business facility located in this State. The amount of the qualified investment is determined by the cost, or other basis, and the useful life of the property.

Critical elements in the determination of qualified investment property for purposes of this credit are how, and from whom, the property is acquired; the acquisition date; date and term of a lease; transfer date; date placed in service or use in this State; as well as the useful life of the property.

For the Economic Opportunity Tax Credit, qualifying investment property acquired and placed in service or use in this State on or after January 1, 2003 may be counted toward the credit.

Qualified Investment Property May Include:

1. Real property and improvements thereto, having a useful life of four (4) or more years placed in service or use in West Virginia on or after January 1, 2003.
2. Real property and improvements thereto, or tangible personal property acquired by written lease with a primary term of ten (10) or more years placed in service or use in West Virginia on or after January 1, 2003.
3. Depreciable or amortizable tangible personal property placed in service or use in West Virginia on or after January 1, 2003 with a useful life of four (4) or more years at the time the property is placed in service or use in this State.
4. Tangible personal property acquired by written lease

* Administrative notice 2014-22 for tax years during calendar year 2015.

having a primary term of four (4) or more years that was commenced and executed on or after January 1, 2003.

5. Tangible personal property owned or leased, used at a business location outside this State which is moved into this State on or after January 1, 2003. If owned, property must be depreciable or amortizable and have a useful life of four (4) or more years remaining at the time the property is placed in service or use in this State. If leased, the primary term of the lease remaining at the time the property is placed in service or use in West Virginia must be four (4) or more years.

Qualified Investment Property May Not Include:

1. Property owned or leased, for which another tax credit (e.g. for Manufacturing Investment Tax Credit, Industrial Expansion and Revitalization; or Research and Development Projects) has been taken by the taxpayer, seller, lessor, or other transferor.
2. Repair costs, unless capitalized for federal income tax purposes.
3. Airplanes.
4. Property primarily used outside this State.
5. Property acquired incidental to the purchase of the stock or assets of the seller. This restriction can be waived by the Tax Commissioner.
6. Natural resources in place.
7. Property purchased or leased, the cost of which cannot be quantified when such property is placed in service.
8. Property not directly attributable to the qualified investment activity (e.g. recreational boat, vehicle for personal use).

Date Placed In Service or Use

Property is considered to be placed in service or use in the earlier of:

1. The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation for such property begins; or
2. The taxable year in which the property is placed in a condition of state or readiness and availability for a specifically assigned function.

Required Records

For each item of qualified property, the taxpayer must maintain records to establish the following:

1. Its identity.
2. Its actual or reasonably determined cost.
3. The month and taxable year in which it was placed in service or use.
4. Its straight line depreciation.
5. The amount of credit taken.
6. The date it was disposed of or otherwise ceased to be qualified property.

Such records must be retained for a period of three (3) years after the last year for which the credit is claimed.

Cost or Other Basis

1. The cost of purchased property may not include the value of property given in trade or exchange for the property purchased.
2. The cost of replacement property may not include any insurance proceeds received in compensation for property damaged or destroyed by fire, flood, storm or other casualty or is stolen.
3. The cost of real property with a written primary lease term of ten (10) or more years is 100% of the rent reserved for the primary term of the lease, not to exceed twenty (20) years.
4. The cost of tangible personal property with a written primary lease term of at least four (4) years but less than six (6) years is one-third (1/3) of the rent reserved for the primary term of the lease.
5. For tangible personal property with a written primary lease term of at least six (6) years but less than eight (8) years, the cost is two-thirds (2/3) of the rent reserved for the primary term of the lease.
6. For tangible personal property with a written lease term of eight (8) or more years, the cost is 100% of the rent reserved for the primary term of the lease, not to exceed twenty (20) years. The rent reserved may not include rent for any year subsequent to the expiration of the book life of the property, determined by use of the straight line method of depreciation.
7. For qualifying property purchased for multiple use the cost must be pro-rated.
8. For self-constructed property the cost is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.
9. The cost of property transferred into this State is determined based on remaining useful life of the property at the time it is placed in service or use in this State. The cost is the original cost of the property to the taxpayer less straight line depreciation allowable for tax years, or portions of tax years, the property was used outside West Virginia.
10. For leased tangible personal property transferred into this State, the cost is based on the period remaining in the primary term of the lease after the property is brought into this State for use in a new or expanded business. The cost is the rent reserved for the remaining period of the primary lease term, not to exceed twenty (20) years or the remaining useful life, whichever is less.
11. For leased property placed into service for which the

cost is not quantifiable at the outset of the lease, only the quantifiable portion, if any, may be aggregated as a qualified investment.

12. The cost of relocating corporate headquarters is the expenses incurred and paid by the corporation to unrelated third parties and which have been certified by the Tax Commissioner to have been both reasonable and necessary to effectuate the move.

Corporate Headquarters Relocation

The Corporate Headquarters Relocation Credit is allowable for corporate headquarters placed in service or use in West Virginia on or after January 1, 2003. An out-of-state corporation relocating its headquarters to West Virginia is allowed a tax credit if it employs at lease fifteen (15) domiciled West Virginia residents on a full-time basis at its new location.

The adjusted qualified investment is the same as the qualified investment determined for the Economic Opportunity Tax Credit, plus the cost of reasonable and necessary expenses incurred to relocate the corporate headquarters.

The amount of the credit is determined by multiplying the adjusted qualified investment by 10 percent (10%). However, if at least twenty (20) jobs are attributable to the relocation or a combination of other qualified investment and the relocation, the regular Economic Opportunity Tax Credit percentages beginning at twenty percent (20%) may be used.

Calculation of Economic Opportunity Tax Credit

The credit is determined by multiplying the amount of the taxpayer's qualified investment by the taxpayer's new jobs percentage and is generally applied over a ten (10) year period (at 1/10th per year) beginning in the taxable year in which the qualified investment is placed in service or use, or, at the taxpayer's option, in the next succeeding tax year. For example, a Credit of $200,000 attributable to $1 million of qualified investment made in 2003 is applied at a rate of $20,000 per year for the 2003-2012 period, or alternatively, at a rate of $20,000 per year for the 2004-2013 period.

This calculation of qualified investment is determined by multiplying the net cost of eligible property by its applicable useful life percentage based on the projected actual economic useful life of the asset. The following percentages apply:

If Useful Life is:	The Applicable Percentage is:
Less than 4 years	0 %
4 years or more but less than 6 years	33 ⅓ %
6 years or more but less than 8 years	66 ⅔ %
8 years or more	100 %

For example, if a Taxpayer purchases a machine for $25,000, for use in a new industrial facility, which has a useful life of six (6) years, the qualified investment is equal to $16,666.66. The $25,000 investment is multiplied by the applicable useful life percentage of 66 2/3% to arrive at $16,666.66 in qualified investment.

The credit can offset a portion of the tax attributable to qualified investment for the Business and Occupation Tax [electric power generation taxes only], Corporation Net Income Tax, and Personal Income Tax [tax on flow through business profits only], in the order stated.

The Economic Opportunity Tax Credit is generally available for investment placed into service or use over a period of 365 days, beginning on the date when property purchased or leased for business expansion is first placed into service or use. Provisions are available for multiple year projects as long as project certification has been obtained from the Tax Commissioner.

Redetermination, Forfeiture, and Recapture of Credit

If during any taxable year, property used as a qualified investment for any of these credits is disposed of prior to the end of its useful life or ceases to be used in an eligible business, the unused portion of the credit attributable to that investment is forfeited for the taxable year and all ensuing years. Forfeiture also applies if the taxpayer ceases operation of a business facility for which credit was allowed before expiration of the useful life of the qualified investment property. The failure to create or maintain the necessary number of new jobs for credit entitlement also results in credit forfeiture.

Redetermination, Forfeiture, and Recapture of Credit

1. Failure to create the minimum number of new jobs within the required two to three year period: The entire credit is forfeited. Any Credit claimed during the first three (3) years must be paid back (recaptured) with interest and a ten (10%) percent penalty.
2. Failure to maintain the minimum number of new jobs in any year subsequent to the initial three-year (3) period (i.e. years four (4) through ten (10)): The credit is forfeited for any year in question, but may be reinstated for any remaining year in which the minimum number is attained, thus enabling the taxpayer to utilize the full annual credit allowance for that taxable year.
3. Failure to maintain the number of jobs necessary to attain a jobs percentage in the 25% to 30% category: The credit for year (s) affected must be redetermined to reflect the jobs percentage attributable to the actual employment increase.
4. Credit attributable to property that ceases to be used in this State prior to the end of its categorized useful life must be recalculated for all tax years according to actual useful life. If the recalculation of credit according

to actual useful life results in an overutilization in a previous year, then a reconciliation statement must be filed with the payment of any additional tax and interest due. Credit attributable to property with a useful life of less than four (4) years is forfeited for all years.

EXAMPLE

Company A creates 50 new jobs and invests $10 million in equipment with a designated useful life of eight (8) years in 2003. The credit for Company A is calculated to equal $2,000,000 or $200,000 per year for ten (10) years. However, Company A moves this equipment to New York in 2008; therefore the equipment's actual useful life in West Virginia is reduced to only five (5) years. The corresponding credit is reduced according to the above formula from $2,000,000 to $666,667 or $66,667 per year for ten (10) years. A reconciliation statement for tax years 2003 through 2008 reflecting an overutilization of credit must be filed with payment of any additional tax, interest, and penalties owed.

Redetermination is not Required:

1. For a mere change in the form of conducting business. However, the property must be retained in a business in this State and the taxpayer must retain a controlling interest in the successor business .
2. If the forfeiture occurs because property is stolen, or damaged by fire, flood, storm, or other casualty.
3. If the business is transferred or sold to a successor business in this State. According to laws governing the credit, any available credit allowed for is subsequent tax years.

The Tax Credit Computation Schedule is designed to accommodate all or any part of these tax credits. Contained within the schedule and instructions is more detailed information regarding the Economic Opportunity Tax Credits.

Instructions for Schedule EOTC-1

Complete business identification section, including business name, address, tax year, federal identification number and North American Industry Classification System (NAICS) code.

Line 1 **Investment Years:** The investment window for the Economic Opportunity Tax Credit is normally one full year. However, the investment window for projects with a multiple year certification is up to three tax years. Enter the year(s) qualified investment is (was) placed into service. For example, if you placed qualified investment into service during the 2003 tax year, you would enter 1/2003-12/2003 in the space provided for Year 1. If you contemplate a multiple year project certification and your first investment year occurred in 2003, you would possibly add information for Year 2 when you complete this schedule for your 2004 tax return, and for Year 3 when you complete this schedule for your 2005 tax return.

Line 2 **Investment Summary [complete if you made qualified investment during the year]:** Enter the net costs of the property in Column (1) on the appropriate line determined by the life of the property. Then multiply the net costs in Column (1) by the applicable percentages in Column (2). Enter the results in Column (3). Add the figures in Column (3) and enter on Line 4 of this section. The amount on Line 4 represents the Taxpayer's qualified investment for this year.

Line 3 **Available Credit Calculation:** Enter your qualified investment from Line 4 above in Column (1). Enter the appropriate new jobs percentage in Column (2). Then multiply the qualified investment in Column (1) by the new jobs percentage in Column (2) and enter the result in Column (3). The amount entered in Column 3 represents your total available credit attributable to this year's qualified investment. This credit must be pro-rated for use over a ten-year period. Multiply the available credit in Column (3) by 10% to arrive at the pro-rated available credit in Column (4).

Line 4 **Pro-Rated Credit Allocation Summary:** This spreadsheet contains space for twelve rows of tax credit data. If the Taxpayer places investment into service over a single tax year, the Taxpayer would have a pro-rated credit available over a 10-year period beginning either with the year of investment or the following year per election of the Taxpayer. If the Taxpayer places investment into service over a period of up to three tax years per certified multiple year project, then the Taxpayer would have as many as three separate pro-rated credit streams beginning on up tothree separate years. For example, a Taxpayer with a multiple project certification has tax credits of $10 million, $5 million, and $2 million attributable to the 2003, 2004 and 2005 tax years. This Taxpayer elects to begin claiming each tax credit in the year investment was first placed into service. Therefore, the Taxpayer has a pro-rated $1 million per year tax credit for the 2003-2012 period, a prorated $0.5 million per year tax credit for the 2004-2013 period, and a pro-rated $0.2 million per year tax credit for the 2005-2014 period. An Economic Opportunity Tax Credit is available to this Taxpayer for a period covering 12 years.

Column 1 [Year Available] – Enter the tax years for which a pro-rated credit is available for use (e.g., 2003 in the first row, followed by 2004 in the second row, and continuing until 2012 in the tenth row). If your investment occurred in 2003, then your first year should either be 2003 or 2004 [if you elected to defer the beginning year of credit on your

Application Form EOTC-A].

Column 2 [Year 1] – Enter the amount of pro-rated tax credit available in each year over the 10-year period.

Column 3 [Year 2] – If applicable and when applicable, enter the amount of pro-rated tax credit available in each year for your actual investment during the second year of a multiple year project, beginning on the row that corresponds with the year of such investment, or the following year if so elected by the Taxpayer. Column 4 [Year 3] – If applicable and when applicable, enter the amount of pro-rated tax credit available in each year for your actual investment during the third year of a multiple year project, beginning on the row that corresponds with the year of such investment, or the following year if so elected by the Taxpayer.

Column 5 [Total Credit] – Sum up the total available tax credit for each applicable year (i.e., the amount in Column 2, Column 3, and Column 4). This represents the total available Economic Opportunity Tax Credit available for tax liability reduction in each year, absent carryovers.

Line 5 Annual New Jobs/Payroll Factor Computation:

a). Pre-Credit Employment Levels:

Column 1, Line 1-Enter the number of full-time equivalent employees employed by you and other members of your controlled group within West Virginia during the twelve-month period prior to the first placement of qualified investment attributable to an Economic Opportunity Tax Credit into service or use.

Column 2, Line 1-Enter the total dollar amount of the annual payroll associated with these employees for this year.

Column 1, Line 2- Enter the number of full-time equivalent new jobs created as the result of your qualified investment.

Column 2, Line 2- Enter the total dollar amount of the annual payroll associated with these new jobs for this year.

Column 1, Line 3- Enter the total number of full-time equivalent employees employed by you and other members of your controlled group within West Virginia for this year.

Column 2, Line 3- Enter the total dollar amount of the annual payroll associated with all employees for this year.

b). Payroll Factor:

Column 1- Enter the amount of new jobs payroll here [i.e., the amount in 5a). Column 2, Line 2].

Column 2- Enter the amount of total payroll from all jobs here [i.e., the amount in 5a). Column 2, Line 3].

Column 3- Divide the amount in Column 1 by the amount in Column 2 and enter the result rounded to six decimals here.

Line 6 Annual Tax Offset Factor: The annual tax credit offset factor for 2015 depends upon the median salary attributable to the new jobs in 2015. If the median salary is at least $48,198**, your tax offset factor is one hundred percent [100%] in 2015. Otherwise, your tax-offset factor is 80% in 2015. Enter the median compensation paid this year to your new employees. For example, if you have 51 new jobs and you sort these jobs from highest paid to lowest paid, the salary paid to the 26th employee in this sort represents the median salary paid for this year. [**See Administrative Notices for values for other years**.]

Tax Credit Application Computation

Line 7a Tax Subject to Credit Offset:

Pre-Credit Liability [Column 1] – Wherever applicable, enter your adjusted pre-credit West Virginia State tax liability for State Business and Occupation Tax [B&O], Corporation Net Income Tax [CNIT] and Personal Income Tax [PIT].

Total these liabilities on the last line. The adjusted pre-credit Personal Income Tax liability is tax liability directly attributable to the pass-through business profits of the business entity qualified to receive the Economic Opportunity Tax Credit.

Payroll Factor [Column 2] – On each applicable row, enter the payroll factor from Section 5 b.) Column 3. This factor should roughly represent the portion of tax liability directly attributable to qualified investment. If this project involves the relocation of a corporate headquarters, the payroll factor only applies to tax attributable to apportioned business income, and 100% of the tax attributable to allocated non-business income may also be offset by the tax credit.

Offset Factor [Column 3] – On each applicable row, enter the offset factor from Section 6. This offset factor will either be 80% or 100% depending upon median compensation.

Tax Subject To Credit Offset [Column 4] – On each applicable row, multiply the Pre-Credit Liability amount in Column 1 by both the Payroll Factor in Column 2 and the Offset Factor in Column 3 to arrive at the Tax Subject To Credit Offset in Column 4.

Line 7b Economic Opportunity Tax Credit Applied:

Pre-Credit Liability [Column 1] – Wherever applicable, copy the amount from Section 7A, Column 1.

Tax Subject To Credit Offset [Column 2] – Wherever applicable, copy the amount from Section 7A, Column 4.

Tax Credit Applied [Column 3] – Use the total credit available for this year from Section 4, Column 5 plus any credit carryover from prior years [Section 8, Line 5 from last year's WV/EOTC-1] to offset up to 100% of the amount of Tax Subject To Credit Offset in Column 2 for each applicable tax

** Per Administrative Notice 2014-21

starting with the Business and Occupation Tax [B&O]. The credit claimed may never exceed the value of Tax Subject To Credit Offset in Column 2.

After Credit Net Tax [Column 4] – Subtract the amount of Tax Credit Applied in Column 3 from the amount of Pre-Credit Liability in Column 1. This represents the net amount of tax due after application of the Economic Opportunity Tax Credit.

Line 8 Tax Credit Recap:

a. Total Credit Pro-Rated For This Year – Enter the amount of credit available for this tax year from Section 4, Column 5.

b. Unused Credit Carryover from Last Year: - Enter the amount of any credit carried over from last year [the amount from Section 8, Line 5 from last year's WV/EOTC-1].

c. Total Credit Available This Year – Sum the amounts from Line 1 and Line 2. This amount represents the total available credit for use this year.

d. Total Credit Used This Year – Enter the sum of Tax Credit Applied this year [the sum total of Section 7B, Column 3].

e. Credit Remaining for Carryover to Next Year – Subtract the amount of Total Credit Used This Year on Line 4 from the amount of Total Credit Available This Year on Line 3. This amount is available for carryover to next year, unless next year represents the 13th Tax Year following the first year of credit use. Any Economic Opportunity Tax Credit remaining after 13 years of use is forfeited.