

H. B. 3006

(By Delegates E. Nelson, Ashley, Anderson, Boggs, Williams,
H. White, Storch, Gearheart, Bates, Espinosa and O’Neal)

[Introduced February 24, 2015; referred to the
Committee on Finance.]

A BILL to amend and reenact §11-10-17a of the Code of West Virginia, 1931, as amended, relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies and underpayments for tax years beginning after December 31, 2016.

Be it enacted by the Legislature of West Virginia:

That §11-10-17a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-17a. Determination of rate of interest.

(a) *In general.* - The annual rate of interest established under this section shall be such adjusted rate as is established by the Tax Commissioner under ~~subsection~~ subsections (b) and (c): *Provided, That for taxable years beginning prior to January 1, 2017, such annual rate shall ~~never~~ not be less than eight percent per annum.*

(b) *Adjustment of interest rate prior to January 1, 2017.* -

1 (1) Establishment of adjusted rate. - If the adjusted prime rate charged by banks (rounded
2 to the nearest full percent):

3 (A) During the six-month period ending on the thirtieth day of September of any calendar
4 year; or

5 (B) During the six-month period ending on the thirty-first day of March of any calendar year,
6 differs from the interest rate in effect under this section on either such date, respectively, then the
7 Tax Commissioner shall establish, within fifteen days after the close of the applicable six-month
8 period, an adjusted rate of interest equal to such adjusted prime rate.

9 (2) Effective date of adjustment. - Any such adjusted rate of interest established under
10 subdivision (1) shall become effective:

11 (A) On the first day of January of the succeeding year in the case of an adjustment
12 attributable to paragraph (1)(A) above; and on

13 (B) The first day of July of the same year in the case of an adjustment attributable to
14 paragraph (1)(B).

15 (c) Adjustment of interest rate after December 31, 2016. - January 1 of each year, the Tax
16 Commissioner shall fix the adjusted rate to equal the adjusted prime rate charged by banks (rounded
17 to the nearest hundredth of a percent) as of November 1 of the preceding year and it shall be
18 immediately effective.

19 ~~(c)~~(d) Definition of "adjusted prime rate". - For purposes of ~~subsection~~ subsections (b) and
20 (c), the term "adjusted prime rate charged by banks" means the average predominant prime rate
21 quoted by commercial banks to large businesses, as determined by the Board of Governors of the
22 Federal Reserve System.

1 ~~(d)~~ (e) *Application of change in interest rate.* -

2 (1) *To deficiencies.* - The interest rate in effect at the time of assessment or when the
3 payment of delinquent tax is made shall not be applied retroactively to the date the tax was due.
4 Interest on moneys owed by the taxpayer shall be the sum of the interest amounts calculated for each
5 year or part thereof from the date prescribed for payment (determined without regard to any
6 extensions) to the date the payment is made using the interest rate in effect for each respective year
7 or part thereof.

8 (2) *To overpayments.* - The interest rate in effect at the time an overpayment of tax is
9 refunded, or a credit therefor is established, by the Tax Commissioner, shall not be applied
10 retroactively to the date the claim for refund or credit was filed with the Tax Commissioner. Interest
11 on moneys owed to taxpayers shall be the sum of the interest amounts calculated for each year or part
12 thereof from date the claim for refund or credit was filed with the Tax Commissioner until date the
13 refund is paid or a credit therefor is established (such dates determined as provided in section
14 seventeen [§[§11-10-17]) using the interest rate in effect for each respective year or part thereof.

NOTE: The purpose of the bill is to eliminate the eight percent floor of the adjusted rate established by the Tax Commissioner and to require it to be adjusted to equal the adjusted prime rate charged by banks in the administration of tax deficiencies and underpayments for tax years beginning after December 31, 2016.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.