

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3240

BY DELEGATE BATES

[Introduced March 16, 2021; Referred to the
Committee on Finance.]

1 A BILL to amend and reenact §11-21-22, and §11-21-22b of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated §11-21-
 3 22c, all relating to providing an earned income tax credit against the personal income tax;
 4 and establishing a West Virginia Child Tax Credit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-22. ~~Low-income family tax credit~~ The West Virginia Working Families tax credit and West Virginia Child Tax Credit.

1 In order to eliminate West Virginia personal income tax on families with low incomes ~~below~~
 2 ~~the federal poverty guidelines~~ and to reduce the West Virginia personal income tax
 3 on working families with moderate incomes, that are immediately above the federal poverty
 4 guidelines there is hereby created a ~~nonrefundable~~ refundable tax credit, to be known as the ~~low-~~
 5 ~~income family tax credit~~ West Virginia Earned Income Tax Credit, against the West Virginia
 6 personal income tax. ~~The low-income family tax credit is based upon family size and the federal~~
 7 ~~poverty guidelines. The low-income tax credit reduces the tax imposed by the provisions of this~~
 8 ~~article on families with modified federal adjusted gross income below or near the federal poverty~~
 9 ~~guidelines: Provided, That for tax years beginning on and after January 1, 2009, any person who~~
 10 ~~is required to pay the federal alternative minimum income tax in the current tax year is disqualified~~
 11 ~~from receiving any tax credit provided under this section~~ The West Virginia Earned Income Tax
 12 Credit is based upon the federal earned income tax credit.

§11-21-22b. Amount of credit.

1 ~~(a) For each taxable year beginning on or after January 1, 2007, the tax credit authorized~~
 2 ~~by section twenty-two of this article may be used by every qualified taxpayer and shall be~~
 3 ~~calculated in accordance with subsections (b) and (c) of this section: *Provided, That for the taxable*~~
 4 ~~year beginning on January 1, 2007, the qualified taxpayer shall be allowed to claim only fifty~~
 5 ~~percent of the amount of the tax credit.~~

6 ~~(b) Qualified taxpayers who file as an individual, as a head of household, as a husband~~
7 ~~and wife who file a joint return, or as an individual entitled to file as a surviving spouse shall be~~
8 ~~entitled to a tax credit based on the following:~~

9 ~~(1) If modified federal adjusted gross income is at or below the federal poverty guidelines~~
10 ~~based on family size, the credit shall be an amount equal to the amount of tax owed under this~~
11 ~~article by the qualified taxpayer;~~

12 ~~(2) If modified federal adjusted gross income is greater than the federal poverty guidelines~~
13 ~~but does not exceed \$300 above the federal poverty guidelines based on family size, the amount~~
14 ~~of credit allowable shall be ninety percent of the amount of tax owed under this article by the~~
15 ~~qualified taxpayer;~~

16 ~~(3) If modified federal adjusted gross income is greater than \$300 above the federal~~
17 ~~poverty guidelines but does not exceed \$600 above the federal poverty guidelines based on family~~
18 ~~size, the amount of credit allowable shall be eighty percent of the amount of tax owed under this~~
19 ~~article by the qualified taxpayer;~~

20 ~~(4) If modified federal adjusted gross income is greater than \$600 above the federal~~
21 ~~poverty guidelines but does not exceed \$900 above the federal poverty guidelines based on family~~
22 ~~size, the amount of credit allowable shall be seventy percent of the amount of tax owed under this~~
23 ~~article by the qualified taxpayer;~~

24 ~~(5) If modified federal adjusted gross income is greater than \$900 above the federal~~
25 ~~poverty guidelines but does not exceed \$1,200 above the federal poverty guidelines based on~~
26 ~~family size, the amount of credit allowable shall be sixty percent of the amount of tax owed under~~
27 ~~this article by the qualified taxpayer;~~

28 ~~(6) If modified federal adjusted gross income is greater than \$1,200 above the federal~~
29 ~~poverty guidelines but does not exceed \$1,500 above the federal poverty guidelines based on~~
30 ~~family size, the amount of credit allowable shall be fifty percent of the amount of tax owed under~~
31 ~~this article by the qualified taxpayer;~~

32 ~~(7) If modified federal adjusted gross income is greater than \$1,500 above the federal~~
33 ~~poverty guidelines but does not exceed \$1,800 above the federal poverty guidelines based on~~
34 ~~family size, the amount of credit allowable shall be forty percent of the amount of tax owed under~~
35 ~~this article by the qualified taxpayer;~~

36 ~~(8) If modified federal adjusted gross income is greater than \$1,800 above the federal~~
37 ~~poverty guidelines but does not exceed \$2,100 above the federal poverty guidelines based on~~
38 ~~family size, the amount of credit allowable shall be thirty percent of the amount of tax owed under~~
39 ~~this article by the qualified taxpayer;~~

40 ~~(9) If modified federal adjusted gross income is greater than \$2,100 above the federal~~
41 ~~poverty guidelines but does not exceed \$2,400 above the federal poverty guidelines based on~~
42 ~~family size, the amount of credit allowable shall be twenty percent of the amount of tax owed~~
43 ~~under this article by the qualified taxpayer; or~~

44 ~~(10) If modified federal adjusted gross income is greater than \$2,400 above the federal~~
45 ~~poverty guidelines but does not exceed \$2,700 above the federal poverty guidelines based on~~
46 ~~family size, the amount of credit allowable shall be ten percent of the amount of tax owed under~~
47 ~~this article by the qualified taxpayer.~~

48 ~~(c) Qualified taxpayers who are husband and wife and who file separate returns shall be~~
49 ~~entitled to a tax credit based on the following:~~

50 ~~(1) If modified federal adjusted gross income is at or below fifty percent of the federal~~
51 ~~poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax~~
52 ~~owed under this article by the qualified taxpayer;~~

53 ~~(2) If modified federal adjusted gross income is greater than fifty percent of the federal~~
54 ~~poverty guidelines but does not exceed \$150 above fifty percent of the federal poverty guidelines~~
55 ~~based on family size, the amount of credit allowable shall be ninety percent of the amount of tax~~
56 ~~owed under this article by the qualified taxpayer;~~

57 ~~(3) If modified federal adjusted gross income is greater than \$150 above fifty percent of~~

58 ~~the federal poverty guidelines but does not exceed \$300 above fifty percent of the federal poverty~~
59 ~~guidelines based on family size, the amount of credit allowable shall be eighty percent of the~~
60 ~~amount of tax owed under this article by the qualified taxpayer; (4) If modified federal adjusted~~
61 ~~gross income is greater than \$300 above fifty percent of the federal poverty guidelines but does~~
62 ~~not exceed \$450 above fifty percent of the federal poverty guidelines based on family size, the~~
63 ~~amount of credit allowable shall be seventy percent of the amount of tax owed under this article~~
64 ~~by the qualified taxpayer;~~

65 ~~(5) If modified federal adjusted gross income is greater than \$450 above fifty percent of~~
66 ~~the federal poverty guidelines but does not exceed \$600 above fifty percent of the federal poverty~~
67 ~~guidelines based on family size, the amount of credit allowable shall be sixty percent of the~~
68 ~~amount of tax owed under this article by the qualified taxpayer;~~

69 ~~(6) If modified federal adjusted gross income is greater than \$600 above fifty percent of~~
70 ~~the federal poverty guidelines but does not exceed \$750 above fifty percent of the federal poverty~~
71 ~~guidelines based on family size, the amount of credit allowable shall be fifty percent of the amount~~
72 ~~of tax owed under this article by the qualified taxpayer;~~

73 ~~(7) If modified federal adjusted gross income is greater than \$750 above fifty percent of~~
74 ~~the federal poverty guidelines but does not exceed \$900 above fifty percent of the federal poverty~~
75 ~~guidelines based on family size, the amount of credit allowable shall be forty percent of the amount~~
76 ~~of tax owed under this article by the qualified taxpayer;~~

77 ~~(8) If modified federal adjusted gross income is greater than \$900 above fifty percent of~~
78 ~~the federal poverty guidelines but does not exceed \$1,050 above fifty percent of the federal~~
79 ~~poverty guidelines based on family size, the amount of credit allowable shall be thirty percent of~~
80 ~~the amount of tax owed under this article by the qualified taxpayer;~~

81 ~~(9) If modified federal adjusted gross income is greater than \$1,050 above fifty percent of~~
82 ~~the federal poverty guidelines but does not exceed \$1,200 above fifty percent of the federal~~
83 ~~poverty guidelines based on family size, the amount of credit allowable shall be twenty percent of~~

84 ~~the amount of tax owed under this article by the qualified taxpayer; or~~

85 ~~(10) If modified federal adjusted gross income is greater than \$1,200 above fifty percent~~
86 ~~of the federal poverty guidelines but does not exceed \$1,350 above fifty percent of the federal~~
87 ~~poverty guidelines based on family size, the amount of credit shall be ten percent of the amount~~
88 ~~of tax owed under this article by the qualified taxpayer.~~

89 ~~(d) The Tax Commissioner shall develop and publish on an annual basis two indexed tax~~
90 ~~credit tables. One tax table shall be for qualified taxpayers who file as an individual, as a head of~~
91 ~~household, as a husband and wife who file a joint return, or as an individual entitled to file as a~~
92 ~~surviving spouse and one tax table shall be for qualified taxpayers who are husband and wife and~~
93 ~~who file separate returns. The indexed tax credit tables shall be based on subsections (b) and (c)~~
94 ~~of this section.~~

95 (a) For each taxable year beginning after December 31, 2021, a West Virginia resident
96 who is eligible for the federal earned income tax credit under Section 32 of the Internal Revenue
97 Code is eligible for a credit under this article equal to 25 percent of the amount of the federal
98 earned income tax credit that the individual:

99 (A) Is eligible to receive in the taxable year; and

100 (B) Claimed for the taxable year under Section 32 of the Internal Revenue Code.

101 (b) If the West Virginia resident is not eligible for the federal earned income tax credit
102 under Section 32 of the Internal Revenue Code solely because the resident does not have a
103 qualifying child the resident is eligible for a credit under this section equal to 25 percent of the
104 amount of the federal earned income tax credit that the individual would have been eligible for if
105 he or she had one qualifying child.

106 (c) If other credits allowed are used by the taxpayer for the taxable year, the West Virginia
107 Earned Income Tax Credit shall be applied last.

108 (d) If the amount of the credit allowed exceeds the taxpayer's West Virginia personal
109 income tax liability, the commissioner shall treat the excess as an overpayment and shall pay the

110 taxpayer the amount of the excess, without interest.

111 (e) The commissioner shall make an effort every year to inform taxpayers who may be
112 eligible to receive the credit provided under this section.

§11-21-22c. The West Virginia Child Tax Credit.

1 (a) In this section, “qualified child” means a dependent for whom a taxpayer is allowed to
2 deduct an exemption under § 151 of the Internal Revenue Code, without regard to the
3 identification requirement under § 151(e) of the Internal Revenue Code, if the dependent:

4 (1) Is under the age of 6 years; or

5 (2)(i) Is under the age of 18 years; and

6 (ii) Has been determined through appropriate assessment to have a developmental, an
7 intellectual, or a physical disability.

8 (b) Subject to subsection (c) of this section, a taxpayer may claim a credit against the state
9 income tax for each qualified child in an amount equal to \$2,000.

10 (c)(1) The amount of the credit allowed under subsection (b) of this section for a qualified
11 child shall be reduced, but not below zero, by the amount of any federal child tax credit claimed
12 against the federal income tax for the qualified child under § 24 of the Internal Revenue Code.

13 (2) The amount of the credit allowed under paragraph (1) of this subsection shall be further
14 reduced, but not below zero, by:

15 (i) In the case of a married couple filing a joint income tax return, 10% for each \$3,000 or
16 fraction of \$3,000 by which the married couple’s federal adjusted gross income exceeds \$75,000;

17 (ii) In the case of an individual who is not married, 10% for each \$2,000 or fraction of
18 \$2,000 by which the individual’s federal adjusted gross income exceeds \$50,000; or

19 (iii) In the case of a married individual filing a separate return, 10% for each \$1,500 or
20 fraction of \$1,500 by which the individual’s federal adjusted gross income exceeds \$37,500.

21 (d) If the credit allowed under this section in any taxable year exceeds the state income
22 tax for that taxable year, the taxpayer may claim a refund in the amount of the excess.

23 (e)(1) For each taxable year beginning after December 31, 2021, the maximum income
24 thresholds under subsection (b) of this section and the maximum income thresholds under
25 subsection (e) of this section shall be increased by an amount equal to the product of the
26 maximum income thresholds and the cost-of-living adjustment specified in this subsection.

27 (2) For purposes of this subsection, the cost-of-living adjustment is the cost-of-living
28 adjustment within the meaning of § 1(f)(3) of the Internal Revenue Code for the calendar year in
29 which a taxable year begins, as determined by the Comptroller, by substituting “calendar year
30 2019” for “calendar year 2016” in § 1(f)(3)(A) of the Internal Revenue Code.

31 (3) If any increase determined under paragraph (1) of this subsection is not a multiple of
32 \$50, the increase shall be rounded down to the next lowest multiple of \$50.

NOTE: The purpose of this bill is to provide an earned income tax credit against the personal income tax and to establish a West Virginia Child Tax Credit.

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