

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **Senate Bill 207**

BY SENATORS BALDWIN, LINDSAY, CAPUTO, WOELFEL,

ROMANO, AND JEFFRIES

[Introduced January 12, 2022; 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, all relating to providing an earned income tax credit against the personal income  
 3 tax.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-22. Low-income family 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 on working  
 3 families with moderate incomes, ~~that are immediately above the federal poverty guidelines~~ there  
 4 is hereby created a ~~nonrefundable~~ refundable tax credit, to be known as the ~~low-income family~~  
 5 ~~tax credit~~ West Virginia Earned Income Tax Credit, against the West Virginia personal income  
 6 tax. ~~The low-income family tax credit is based upon family size and the federal poverty guidelines.~~  
 7 ~~The low-income tax credit reduces the tax imposed by the provisions of this article on families~~  
 8 ~~with modified federal adjusted gross income below or near the federal poverty guidelines:~~  
 9 ~~Provided, That for tax years beginning on and after January 1, 2009, any person who is required~~  
 10 ~~to pay the federal alternative minimum income tax in the current tax year is disqualified from~~  
 11 ~~receiving any tax credit provided under this section~~ The West Virginia Earned Income Tax Credit  
 12 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, 2022, 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.

NOTE: The purpose of this bill is to create the West Virginia Earned Income Tax Credit. The bill authorizes a refundable tax credit based upon the federal earned income tax credit. The bill determines eligibility for the credit. The bill determines the amount of the 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.