

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2821

By Delegates Cannon, Steele, Fluharty, Riley, Nestor,

Storch and Espinosa

[Originating in the Committee on Finance; February 9, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-21-12n, relating to authorizing a decreasing modification reducing federal
3 adjusted gross income for state personal income tax purposes in amount of certain West
4 Virginia gaming and gambling losses, not to exceed the amount of West Virginia gaming
5 and gambling winnings, for that year; requiring detailed records substantiating losses; and
6 placing burden of proving any loss on taxpayer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12n. Additional modification reducing federal adjusted gross income related to gaming and gambling losses.

1 (a) In addition to amounts authorized to be subtracted from federal adjusted gross income
2 pursuant to §11-21-12, a modification reducing federal adjusted gross income is hereby
3 authorized for taxable years beginning on and after January 1, 2020. When calculating income
4 from West Virginia gaming activity and West Virginia gambling activity for the taxable year, the
5 taxpayer may apply a decreasing modification against West Virginia adjusted gross income in the
6 amount of West Virginia gaming and gambling losses allowable as an itemized deduction under
7 the United States Internal Revenue Code, not to exceed the amount of West Virginia gaming and
8 gambling winnings, for that year: *Provided*, That this decreasing modification may not include
9 costs and expenses incurred in connection with the gaming or gambling activity: *Provided further*,
10 That the taxpayer may amend previously filed returns for the 2020, 2021, and 2022 tax years to
11 recognize this decreasing modification. Based on such amended returns as specified herein, any
12 finances, assessments, penalties, or interest levied thereon are void, and returnable to the taxpayer.

13 (b) The following gaming and gambling losses are not subject to this decreasing
14 modification:

15 (1) Gaming and gambling losses that have been applied as a deduction in determining the
16 taxpayer's federal adjusted gross income; and

17 (2) Gaming and gambling losses incurred in any unlawful gambling activity.

18 (c) The taxpayer shall maintain detailed records substantiating losses if the taxpayer

19 intends to apply the decreasing modification allowable under this section for those losses. The

20 taxpayer shall have the burden of proving any loss.