

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 3246

FISCAL  
NOTE

By Delegates Criss and Kump

[By Request of the Department of Tax and Revenue]

[Introduced February 03, 2023; Referred to the  
Committee on Finance]

1 A BILL to amend and reenact §11-10-17 of the Code of West Virginia, 1931, as amended, relating  
2 to removing the additional one and one-half percent interest rate for tax underpayments  
3 and specifying an effective date.

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

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

**§11-10-17.**

**Interest.**

1 (a) Underpayments. — If any amount of a tax administered under this article is not paid on  
2 or before the last date prescribed for payment, interest on the amount at the rate of eight percent  
3 per annum shall be paid for the period from the last date to the date paid: *Provided*, That on and  
4 after July 1, 1986, interest on underpayments shall be paid at the annual rate established under  
5 §11-10-17a of this code, from the period beginning on July 1, or from the last day prescribed for  
6 payment, whichever is the later, to the date paid, regardless of when liability for the tax arose.  
7 ~~Provided, however, That on and after July 1, 2002, interest on underpayments shall be paid at an~~  
8 ~~annual rate of one and one-half percent above the annual rate established under section~~  
9 ~~seventeen-a of this article, from the period beginning on July 1, or from the last day prescribed for~~  
10 ~~payment, whichever is the later, to the date paid, regardless of when liability for the tax arose For~~  
11 ~~purposes of this subsection, the last date prescribed for payment shall be the due date of the~~  
12 ~~return and shall be determined without regard to any extension of time for payment.~~

13 (b) Last date for payment not otherwise prescribed. -- In the case of taxes payable by  
14 stamp or other indicia of tax payment and in all other cases in which the last day for payment is not  
15 otherwise prescribed, the last date for payment shall be considered to be the date the liability for  
16 tax arises and in no event ~~shall~~ may be later than the date notice and demand for payment of the  
17 tax is made by the Tax Commissioner.

18 (c) Erroneous refund or credit. -- If any refund is made or credit is established upon an  
19 erroneous claim for refund or credit, interest on the amount refunded or credited at the annual rate  
20 established under §11-10-17a of this code, shall be paid by the claimant from the date the refund

21 was made or the credit was taken to the date the amount is recovered.

22 (d) Overpayments. -- Interest shall be allowed and paid at the annual rate of eight percent  
23 per annum upon any amount which has been finally administratively or judicially determined to be  
24 an overpayment in respect of each tax administered under this article except the taxes imposed by  
25 §11-12-1 *et seq.*, §11-14-1 *et seq.*, and §11-14A-1 *et seq.* of this code: *Provided*, That on and after  
26 July 1, 1986, interest on overpayments shall be paid at the annual rate established under §11-10-  
27 17a of this code, from July 1, or the date the claim for refund or credit is filed, whichever is the later,  
28 regardless of when the tax was paid. The interest shall be allowed and paid for the period  
29 commencing with the date of the filing by the taxpayer of a claim for refund or credit with the Tax  
30 Commissioner and ending with the date of a final administrative or judicial determination of  
31 overpayment. The Tax Commissioner shall, within 30 days after the determination of entitlement to  
32 refund, issue his or her requisition or establish a credit as requested by the taxpayer. Whenever  
33 the Tax Commissioner fails or refuses to issue any requisition or establish the credit within said 30-  
34 day period, the interest provided herein shall commence to accrue until performance by the Tax  
35 Commissioner. The acceptance of the refund check or credit shall be without prejudice to any right  
36 of the taxpayer to claim any additional overpayment and interest thereon.

37 (e) Applicable rules. -- For purposes of this section:

38 (1) No interest payable on tax refunded or credited within ninety days after claim for refund  
39 or credit is filed. -- In the event of the overpayment of any tax administered under this article,  
40 except the tax imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code, where the Tax  
41 Commissioner issues his or her requisition or establishes a credit as requested by the taxpayer  
42 within 90 days after the date of the filing by the taxpayer of a claim for refund or credit, no interest  
43 shall be allowed under this section.

44 (2) No interest payable where personal income tax and corporation net income tax  
45 refunded or credited within six months after claim for refund or credit is filed. -- In the event of the  
46 overpayment of the tax imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code, where the

47 Tax Commissioner issues his or her requisition or establishes a credit as requested by the  
48 taxpayer within six months after the date of the filing by the taxpayer of a claim for refund or credit,  
49 no interest shall be allowed under this section.

50 (3) Interest treated as tax. -- Interest prescribed under this section on any tax shall be  
51 collected and paid in the same manner as taxes.

52 (4) No interest on interest. -- No interest under this section ~~shall~~ may be imposed on the  
53 interest provided by this section prior to July 1, 1986.

54 (5) Interest on penalties or additions to tax. -- Interest shall be imposed under subsection  
55 (a) of this section on any assessable penalty or additions to tax only if the penalty or additions to  
56 tax is not paid within 15 days from the date of notice and demand therefor, and in that case,  
57 interest shall be imposed only for the period from the date of the notice and demand to the date of  
58 payment.

59 (6) Payments made within 15 days after notice and demand. -- If notice and demand is  
60 made for payment of any amount, and if the amount is paid within 15 days after the date of the  
61 notice and demand, interest under this section on the amount so paid may not be imposed for the  
62 period after the date of the notice and demand.

63 (7) Limitation on collection. -- Interest prescribed under this section on any tax may be  
64 collected at any time during the period within which the tax to which the interest relates may be  
65 collected.

66 (8) Exception as to estimated tax. -- This section does not apply to any failure to pay any  
67 estimated tax required to be paid under §11-13-1 *et seq.*, §11-13A-1 *et seq.*, §11-13B-1 *et seq.*,  
68 §11-21-1 *et seq.*, §11-23-1 *et seq.*, or §11-24-1 *et seq.* of this code.

69 (9) Effective date. -- Changes made to this section during the 2023 Legislative Session  
70 shall be effective after December 31, 2023.

NOTE: The purpose of this bill is to repeal the additional one and one-half percent interest

rate for underpayments after December 31, 2023.

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