

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2523

**FISCAL
NOTE**

By Delegate Riley

[Introduced February 17, 2025; referred to the
Committee on Finance]

A BILL to amend and reenact §11-21-20 of the Code of West Virginia, 1931, as amended, relating to the personal income tax; alleviating double taxation on foreign income at the state level; and sunsetting the credit for income tax paid on foreign income in 2070.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-20. Credit for income tax of another state and foreign country.

(a) General. — A resident ~~shall be~~ is allowed a credit against the tax otherwise due under this article for any income tax paid to another state of the United States, ~~or by the District of Columbia, or to a foreign country~~ for the taxable year, either directly paid by the individual or paid by a pass-through entity in accordance with §11-21-3a of this code and passed through by the entity to the individual taxpayer, upon income both derived therefrom and subject to tax under this article. As used in this subsection, "pass-through entity tax" refers to a state net income tax imposed by another state on a pass-through entity that is substantially similar to the tax imposed by §11-21-3a of this code. Solely for purposes of this section, an owner of a pass-through entity shall be considered liable for tax paid to another state by the pass-through entity pursuant to a pass-through entity tax imposed by the state (whether elected or otherwise) in an amount equal to that portion of the pass-through entity tax representing the owner's share of the pass-through entity's income subject to the tax, and the owner shall be considered to have paid that portion of the tax paid by the pass-through entity. The owner of a pass-through entity shall also be considered liable for and to have paid state income taxes to another state paid by the pass-through entity on behalf of an owner through withholding, a composite return, or otherwise. If an owner receives a refund or credit for overpayment of all or part of a pass-through entity tax imposed by another state, the amount paid by the owner shall be reduced by the refund or credit.

(b) Limitations. — (1) The credit under this section ~~shall~~ may not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by ~~such~~ the other jurisdiction by the total amount of the

21 taxpayer's West Virginia income.

22 (2) The credit under this section shall not reduce the tax otherwise due under this article to
23 an amount less than would have been due if the income subject to taxation by ~~such~~ the other
24 jurisdiction were excluded from the taxpayer's West Virginia income.

25 (3) A credit pursuant to this section for income tax paid to a foreign country shall be allowed
26 only when the taxpayer demonstrates to the satisfaction of the Tax Commissioner that, after
27 application of provisions of the Internal Revenue Code with regard to taxation of foreign income,
28 double taxation of the foreign income included in the federal adjusted gross income of the taxpayer
29 will occur unless the credit provided in this section is allowed.

30 (c) Exception. — No credit ~~shall be~~ is allowed under this section for a tax of a jurisdiction
31 which allows residents of this state a credit against the taxes imposed by ~~such~~ the other
32 jurisdiction for the tax under this article, if such other credit is substantially similar to the credit
33 granted by §11-21-40 of this code.

34 (d) Definition. — For purposes of this section West Virginia income means:

35 (1) The West Virginia adjusted gross income of an individual;

36 (2) The amount of the income of an estate or trust, determined as if the estate or trust were
37 an individual computing his or her West Virginia adjusted gross income under §11-21-12 of this
38 code; or

39 (3) The taxable income of an electing pass-through entity for which election is made and
40 determined in accordance with §11-21-3a of this code.

41 (e) Effective date. — This section as amended in 2023 shall apply to taxable years
42 beginning on and after January 1, 2022.

43 (f) Sunset provision. — The credit allowed against the tax otherwise due under this article
44 for any income tax imposed for the taxable year by a foreign country upon income both derived
45 therefrom and subject to tax under this article is effective from the amendment and reenactment of
46 this section during the 2025 regular session of the Legislature through July 1, 2070.

NOTE: The purpose of this bill is to alleviate double taxation on foreign income at the state level. The bill sunsets the credit for income tax paid on foreign income in 2070.

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