WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 2123

By Delegates Linville and Espinosa

[Introduced February 10, 2021; Referred to the Committee on Finance]

A BILL to amend and reenact §11-21-4e of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11B-2-33, all relating to reducing personal income tax rates when personal income tax reduction fund is funded at a certain threshold, and further reducing those rates when that threshold is reached again; establishing a personal income tax reduction fund and providing for deposits into the personal income tax reduction fund from sales and use taxes, derived from certain lottery games that utilize an electronic computer and a video screen, racetrack table games, lottery games that are derived from limited video lottery operations, derived from sports wagering at a secondary location of a licensed racetrack, and derived from interactive gaming at a primary or secondary location of a licensed racetrack; specifying rate reductions; providing for deposits from personal income tax reduction fund into general revenue fund; imposing duties on the State Tax Commissioner and other state agencies officers; and providing for investment and disposition of fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax — Taxable years beginning on or after January 1, 1987; taxable years after December 31, 2021.

(a) *Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, estates and trusts. —* The tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust shall be determined in accordance with the following table:

If the West Virginia

taxable income is: The tax is:

Not over $10,000 3% of the taxable income

Over $10,000 but not $300.00 plus 4% of excess

 over $25,000 over $10,000

Over $25,000 but not $900.00 plus 4.5% of excess

 over $40,000 over $25,000

Over $40,000 but not $1,575.00 plus 6% of excess

 over $60,000 over $40,000

Over $60,000 $2,775.00 plus 6.5% of excess

 over $60,000

(b) *Rate of tax on married individuals filing separate returns. —* In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia

taxable income is: The tax is:

Not over $5,000 3% of the taxable income

Over $5,000 but not $150.00 plus 4% of excess

 over $12,500 over $5,000

Over $12,500 but not $450.00 plus 4.5% of

 over $20,000 excess over $12,500

Over $20,000 but not $787.50 plus 6% of excess

 over $30,000 over $20,000

Over $30,000 $1,387.50 plus 6.5% of

 excess over $30,000

(c) *Applicability of this section. —* The provisions of this section, as amended by this act, shall be applicable in determining the rate of tax imposed by this article for all taxable years beginning after December 31, 1986, and shall be in lieu of the rates of tax specified in §11-21-4d of this code. The provisions of this section and of §11B-2-33 of this code shall be applicable in determining the rate of tax imposed by this article for all taxable years beginning after December 31, 2021, and shall be in lieu of the rates of tax specified in this section upon the occurrence of the events specified in §11B-2-33 of this code.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-33. Personal income tax reduction fund.

(a) The personal income tax reduction fund is hereby established. The personal income tax reduction fund shall be funded continuously and on a revolving basis in accordance with this section, with all interest or other earnings on the moneys therein credited to the fund. The personal income tax reduction fund shall be funded as provided by this section, by other provisions of this code, and by any appropriation made to the fund by the Legislature. Moneys in the personal income tax reduction fund may be expended solely for the purposes set forth in this section.

(b) Notwithstanding any other provision of this code to the contrary, moneys to be deposited in the personal income tax reduction fund include:

(1) Not more than $3 million annually of the net amount of all West Virginia state sales and use tax collections on all sales made on and after January 1, 2022, in which the internet was used to order, ship, or buy a product, on-line, but only where the sale was made by an out of state vendor that registered with the State Tax Division for the first time on or after January 1, 2022, to collect and remit state sales and use taxes to the state. The State Tax Commissioner shall deposit the amounts as required by this section into the fund;

(2) The net amount of the state’s share of the gross sales received by the State Lottery Commission that are derived from lottery games authorized under §29-22-1 *et seq.* of this code on and after January 1, 2021, that utilize an electronic computer and a video screen to operate a lottery game and communicate the results thereof, such as the games of “Travel” or “Keno”, and which do not utilize an interactive electronic terminal device allowing input by an individual player, that are made available by the State Lottery Commission in locations other than: (A) Private clubs licensed in accordance with the provisions of §60-7-1 *et seq.* of this code; (B) retail licensees licensed in accordance with the provisions of §60-3A-1 *et seq.* of this code; or (C) in the facilities of class A licensees which are licensed in accordance with the provisions of §11-16-9 of this code, in which facility at least 75 percent of the nonintoxicating beer sold by the class A licensee in the preceding year was sold for consumption on the premises. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(3) The net amount of the state’s share of gross terminal income received by the State Lottery Commission that are derived from lottery games that are derived from limited video lottery operations authorized under §29-22B-1 *et seq.* of this code on and after January 1, 2020, that are operated at a retail location by a licensed operator authorized by the State Lottery Commission to operate limited video lottery terminals as a limited video lottery retailer. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(4) The net amount of the state’s share of gross revenues received by the State Lottery Commission that are derived from racetrack video lottery terminals at a secondary location of a licensed racetrack authorized under §29-22A-1 *et seq.* of this code on and after January 1, 2021. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(5) The net amount of the state’s share of gross revenues received by the State Lottery Commission that are derived from racetrack table games at a secondary location of a licensed racetrack authorized under §29-22C-1 *et seq.* of this code on and after January 1, 2021. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(6) The net amount of the state’s share of gross revenues received by the State Lottery Commission that are derived from sports wagering at a secondary location of a licensed racetrack authorized under §29-22D-1 *et seq.* of this code on and after January 1, 2021. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(7) The net amount of the state’s share of gross revenues received by the State Lottery Commission that are derived from interactive gaming at a primary or secondary location of a licensed racetrack authorized under §29-22E-1 *et seq.* of this code on and after January 1, 2021. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(8) After depositing the amounts into the Revenue Shortfall Reserve Fund as required under §11B-2-20 of this code, 25 percent of all surplus revenues described in that section; and

(9) All other amounts directed to be deposited into the fund by any provision of this code or appropriation.

(c)(1) If at the end of any fiscal year the personal income tax reduction fund is funded at an amount equal to or exceeding 2.5 times the total net reduction in personal income tax revenue collections that would have been received in that fiscal year if the income tax rates for that fiscal year had been reduced by 0.25 percent, the Secretary of Revenue shall certify the same to the State Tax Commissioner on or before the next ensuing July 31.

(2) Upon the certification, for all taxable years beginning on or after the next ensuing January 1, the tax imposed by §11-21-3 of this code shall, in lieu of the provisions of §11-21-4e of this code, be imposed in accordance with the following as if fully set forth therein: The Tax Commissioner shall publish by administrative notice the provisions set forth in §11-21-4e of this code after reducing each percentage by 0.25 percent, which published provisions shall for all taxable years beginning on or after the next ensuing January 1, be the tax imposed by §11-21-3 of this code in lieu of the provisions of §11-21-4e of this code.

(3) Upon the certification, on the next ensuing July 1, the Secretary of Revenue shall transfer the sum of the multiplication described in subdivision (1) of this subsection from the personal income tax reduction fund to the General Revenue Fund of the state.

(d)(1) After the occurrence of the events described in subdivision (1), subsection (c) of this section, if at the end of any fiscal year the personal income tax reduction fund is funded at an amount equal to or exceeding two and one-half times the total net reduction in personal income tax revenue collections that would have been received in that fiscal year if the income tax rates for that fiscal year had been reduced by 0.25 percent, less the amount required to be transferred by subdivision (3), subsection (c) of this section, if required, the Secretary of Revenue shall certify the same to the State Tax Commissioner on or before the next ensuing July 31.

(2) Upon the certification, for all taxable years beginning on or after the next ensuing January 1, the tax imposed by §11-21-3 of this code shall, in lieu of the provisions of §11-21-4e of this code, be imposed in accordance with the following as if fully set forth therein: The Tax Commissioner shall publish by administrative notice the provisions set forth in §11-21-4e of this code after reducing each percentage by an additional 0.25 percent to the same effect of reducing those percentages as provided by subdivision (2), subsection (c) of this section, which published provisions shall for all taxable years beginning on or after the next ensuing January 1, be the tax imposed by §11-21-3 of this code in lieu of the provisions of §11-21-4e of this code.

(3) Upon the certification, on the next ensuing July 1, the Secretary of Revenue shall transfer the sum of the multiplication described in subdivision (1) of this subsection from the personal income tax reduction fund to the General Revenue Fund of the state.

(e) The moneys in the personal income tax reduction fund shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of §12-6C-1 *et seq.* of this code and to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of §12-6-1 *et seq.* of this code in such amounts as may be directed in the discretion of the Secretary of Revenue. Any balance of the personal income tax reduction fund, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the personal income tax reduction fund for the purposes set forth in this section.

NOTE: The purpose of this bill is to reduce personal income tax rates when personal income tax reduction fund is funded at a certain threshold from funds derived from sales and use taxes, certain lottery games that utilize an electronic computer and a video screen, racetrack table games, lottery games that are derived from limited video lottery operations, derived from sports wagering at a secondary location of a licensed racetrack, and derived from interactive gaming at a primary or secondary location of a licensed racetrack, and further reducing those rates when that threshold is reached again. The bill establishes a personal income tax reduction fund and provides for deposits into the personal income tax reduction fund. The bill specifies rate reductions and provides for deposits from the personal income tax reduction fund into the general revenue fund. The bill imposes duties on the State Tax Commissioner and other state agencies officers; and provides for investment and disposition of fund.

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