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Originating

House Bill 3300

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[Originating in the Committee on Finance; Reported

on March 22, 2021]

A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-4g; and to amend said code by adding thereto a new section, designated §11B-2-33, all relating to reducing personal income tax rates generally; reducing rates by certain amounts after December 31, 2021; incrementally reducing rates thereafter to zero based upon annual calculations and actions by the Tax Commissioner; creating, and providing funding for, personal income tax reduction fund; providing for deposits by Secretary of Revenue from income tax reduction fund into general revenue fund; 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.

§11-21-4g. Rate of tax — Taxable years beginning after December 31, 2021 and thereafter.

(a)(1) *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	2.8% of the taxable income
Over $10,000 but not over $25,000	$280.00 plus 3.7% of excess over $10,000
Over $25,000 but not over $40,000	$835.00 plus 4.2% of excess over $25,000

Over $40,000 but not over $60,000	$1,465.00 plus 5.6% of excess over $40,000
Over $60,000	$2,585.00 plus 6% of excess over $60,000

(2) *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	2.8% of the taxable income
Over $5,000 but not over $12,500	$140.00 plus 3.7% of excess over $5,000
Over $12,500 but not over $20,000	$417.50 plus 4.2% of excess over $12,500
Over $20,000 but not over $30,000	$732.50 plus 5.6% of excess over $20,000
Over $30,000	$1,292.50 plus 6% of excess over $30,000

(3) *Applicability of this section.* — The provisions of this subsection shall be applicable in determining the rates 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 §11-21-4e of this code.

(b) *Rate of tax — Taxable years beginning after December 31, 2022* – (1) The provisions of this subsection shall be applicable in determining the rates of tax imposed by this article for all taxable years beginning after December 31, 2022, and shall be in lieu of the rates of tax specified in subsection (a) of this section.

(2) After December 31, 2021, the Tax Commissioner shall determine the general revenue collections received by the state during calendar year 2021, and calculate the reduction in the rates imposed by this article during calendar year 2021 that would have reduced those calendar

year collections by $150 million. In calculating the reduction of rates, the Tax Commissioner shall provide for a reduction of each percentage in each marginal rate of tax for calendar year 2021. The calculation of the reduction of percentages shall be as uniformly as possible, but where uniformity cannot be achieved, the reductions shall be scaled to reduce the rates of lower income taxpayers at a more accelerated rate of reduction.

(3) After calculating the reduction of rates as provided in subdivision (2) of this subsection, the Tax Commissioner, no later than March 1, 2022, shall by administrative order publish the new rates as calculated pursuant subdivision (2) of this subsection, which rates shall be imposed in lieu of the rates of tax imposed by this article under subsection (a) of this section for taxable years beginning after December 31, 2022.

(4) After December 31, 2022, and after each December 31 thereafter until all the rates of tax imposed by this article are eliminated, the Tax Commissioner shall perform in like fashion the duties required in subdivisions (2) and (3) of this subsection.

(5) Notwithstanding any provision of this subsection to the contrary, in any calendar year in which the Secretary of Revenue deposits funds into the General Revenue Fund of the state from the income tax reduction fund as required by §11B-2-33 of this code, the Tax Commissioner shall calculate the reduction in the rates imposed by this article during that calendar year that would have reduced those calendar year collections by $300 million and impose those reduced rates instead of rates based upon the $150 million reduction otherwise required by this subsection.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-33. Income tax reduction fund.

(a) The income tax reduction fund is hereby established. The 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 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 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 income tax reduction fund include:

(1) Not more than $25 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, 2021, 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, 2021, 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; and

(4) The net amount of the state's share of gross terminal income received by the State Lottery Commission that are derived from limited video lottery operations under §29-22B-1 *et seq.* of this code from any additional limited video lottery terminals used at an existing location as authorized by the State Lottery Commission under §29-22B-1101 of this code on and after July 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 sports wagering at 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;

(6) 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 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;

(7) Notwithstanding any provision of §11B-2-20 of this code to the contrary and in lieu thereof, within sixty days of the end of each fiscal year, the secretary of revenue shall cause to be deposited into the Revenue Shortfall Reserve Fund the first twenty-five percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended. After depositing the amounts into the Revenue Shortfall Reserve Fund as required under this subdivision, the secretary of revenue shall deposit fifty percent of all remaining surplus revenues described in that section into the income tax reduction fund; and

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

(c) Notwithstanding any other provision of this code to the contrary, there is hereby dedicated for the purposes of this section the moneys to be deposited in the income tax reduction fund as follows:

(1) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, $18 million from gross collections of the tax imposed by §11-21-1, *et seq.* of this code shall be deposited each calendar year to the credit of the income tax reduction fund in accordance with the following schedule. Each calendar month, except for July, August and September each year, $2 million shall be transferred, on or before the twenty-eighth day of the month, to the income tax reduction fund. In any month in which collections are insufficient to meet the requirements of this section, the whole of the collections shall be transferred to the fund and the balance shall be transferred to the credit of the fund from ensuing monthly collections until the full deficit amount is deposited.

(2) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, $9 million from gross collections of the tax imposed by §11-15-1, *et seq.* and §11-15A-1, *et seq.* of this code shall be deposited each calendar year to the credit of the income tax reduction fund in accordance with the following schedule. Each calendar month, except for July, August and September each year, $1 million shall be transferred, on or before the twenty-eighth day of the month, to the income tax reduction fund. In any month in which collections are insufficient to meet the requirements of this section, the whole of the collections shall be transferred to the fund and the balance shall be transferred to the credit of the fund from ensuing monthly collections until the full deficit amount is deposited.

(3) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, $2,700,000 from gross collections of the taxes imposed by §11-13A-1, *et seq.* of this code shall be deposited each calendar year to the credit of the income tax reduction fund in

accordance with the following schedule. Each calendar month, except for July, August and September each year, $300,000 shall be transferred, on or before the twenty-eighth day of the month, to the income tax reduction fund. In any month in which collections are insufficient to meet the requirements of this section, the whole of the collections shall be transferred to credit of the fund and the balance shall be transferred to the credit of the fund from ensuing monthly collections until the full deficit amount is deposited.

(4) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, $1,800,000 from gross collections of the taxes imposed by §11-17-1, *et seq.* of this code shall be deposited each calendar year to the credit of the income tax reduction fund in accordance with the following schedule. Each calendar month, except for July, August and September each year, $200,000 shall be transferred, on or before the twenty-eighth day of the month, to the income tax reduction fund. In any month in which collections are insufficient to meet the requirements of this section, the whole of the collections shall be transferred to the fund and the balance shall be transferred to the credit of the fund from ensuing monthly collections until the full deficit amount is deposited.

(5) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, $1,800,000 from gross collections of the tax imposed by §11-24-1, *et seq.* of this code shall be deposited each calendar year to the credit of the income tax reduction fund in accordance with the following schedule. Each calendar month, except for July, August and September each year, $200,000 shall be transferred, on or before the twenty-eighth day of the month, to the income tax reduction fund. In any month in which collections are insufficient to meet the requirements of this section, the whole of the collections shall be transferred to the fund and the balance shall be transferred to the credit of the fund from ensuing monthly collections until the full deficit amount is deposited.

(6) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, $1,800,000 from gross collections of the taxes imposed by Chapter 33 of this code shall

be deposited each calendar year to the credit of the income tax reduction fund in accordance with the following schedule. Each calendar month, except for July, August and September each year, $200,000 shall be transferred, on or before the twenty-eighth day of the month, to the income tax reduction fund. In any month in which collections are insufficient to meet the requirements of this section, the whole of the collections shall be transferred to the fund and the balance shall be transferred to the credit of the fund from ensuing monthly collections until the full deficit amount is deposited.

(7) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, $1,800,000 from gross collections of the taxes imposed by §11-13-1, *et seq.* of this code shall be deposited each calendar year to the credit of the income tax reduction fund in accordance with the following schedule. Each calendar month, except for July, August and September each year, $200,000 million shall be transferred, on or before the twenty-eighth day of the month, to the income tax reduction fund. In any month in which collections are insufficient to meet the requirements of this section, the whole of the collections shall be transferred to the fund and the balance shall be transferred to the credit of the fund from ensuing monthly collections until the full deficit amount is deposited.

(d) In addition to the amounts to be deposited in the income tax reduction fund under subsections (b) and (c) of this section, there is hereby dedicated for the purposes of this section the moneys to be deposited in the income tax reduction fund as follows:

(1) Notwithstanding any other provision of this code to the contrary, beginning in January of 2022, one-half of one percent of gross collections of any amounts collected and received each month under any act of the Legislature providing that funds collected or received under the act shall be used for specific purposes shall be deposited each calendar month to the credit of the income tax reduction fund.

(2) Excluded from the requirements of subdivision (1) of this subsection are the following:

(A) Federal funds received by the state;

(B) All funds derived from the sale of farm and dairy products from farms operated by any spending unit of the state;

(C) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

(D) All fees and funds collected at state educational institutions for student activities;

(E) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(F) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(G) All insurance collected on account of losses by fire and refunds;

(H) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices; and

(I) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking fund, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation.

(e)(1) If at the end of any fiscal year the income tax reduction fund is funded at an amount equal to or exceeding $400 million, the Secretary of Revenue shall certify the same to the State Tax Commissioner on or before the next ensuing July 31.

(2) Not later than 60 days following the certification, the Secretary of Revenue shall transfer the sum of $100 million from the income tax reduction fund to the General Revenue Fund of the state.

(f) The moneys in the income tax reduction fund shall be made available to the West Virginia Board of Treasury Investments and to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of §12-6C-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 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 income tax reduction fund for the purposes set forth in this section.

NOTE: The purpose of this bill is to incrementally reduce and eliminate personal income taxes.