WEST virginia legislature

2021 regular session

**FISCAL NOTE**

Introduced

Senate Bill 571

By Senators Baldwin, Lindsay, and Woelfel

[Introduced March 5, 2021; referred  
to the Committee on Finance]

A BILL to amend and reenact §11-21-22 and §11-21-22b of the Code of West Virginia, 1931, as amended, relating to providing an earned income tax credit against the personal income tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-22. Low-income family tax credit.

In order to eliminate West Virginia personal income tax on families with low incomes ~~below the federal poverty guidelines~~ and to reduce the West Virginia personal income tax on working families with moderate incomes, ~~that are immediately above the federal poverty guidelines~~ there is hereby created a ~~nonrefundable~~ refundable tax credit, to be known as the ~~low-income family tax credit~~ West Virginia Earned Income Tax Credit, against the West Virginia personal income tax. ~~The low-income family tax credit is based upon family size and the federal poverty guidelines. The low-income tax credit reduces the tax imposed by the provisions of this article on families with modified federal adjusted gross income below or near the federal poverty guidelines: Provided, That for tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section~~ The West Virginia Earned Income Tax Credit is based upon the federal earned income tax credit.

§11-21-22b. Amount of credit.

~~(a) For each taxable year beginning on or after the first day of January, two thousand seven, the tax credit authorized by section twenty-two [§ 11-21-22] of this article may be used by every qualified taxpayer and shall be calculated in accordance with subsections (b) and (c) of this section: Provided, That for the taxable year beginning on the first day of January, two thousand seven, the qualified taxpayer shall be allowed to claim only fifty percent of the amount of the tax credit.~~

~~(b) Qualified taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint return, or as an individual entitled to file as a surviving spouse shall be entitled to a tax credit based on the following:~~

~~(1) If modified federal adjusted gross income is at or below the federal poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax owed under this article by the qualified taxpayer;~~

~~(2) If modified federal adjusted gross income is greater than the federal poverty guidelines but does not exceed three hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be ninety percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(3) If modified federal adjusted gross income is greater than three hundred dollars above the federal poverty guidelines but does not exceed six hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be eighty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(4) If modified federal adjusted gross income is greater than six hundred dollars above the federal poverty guidelines but does not exceed nine hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be seventy percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(5) If modified federal adjusted gross income is greater than nine hundred dollars above the federal poverty guidelines but does not exceed one thousand two hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be sixty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(6) If modified federal adjusted gross income is greater than one thousand two hundred dollars above the federal poverty guidelines but does not exceed one thousand five hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(7) If modified federal adjusted gross income is greater than one thousand five hundred dollars above the federal poverty guidelines but does not exceed one thousand eight hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be forty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(8) If modified federal adjusted gross income is greater than one thousand eight hundred dollars above the federal poverty guidelines but does not exceed two thousand one hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(9) If modified federal adjusted gross income is greater than two thousand one hundred dollars above the federal poverty guidelines but does not exceed two thousand four hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer; or~~

~~(10) If modified federal adjusted gross income is greater than two thousand four hundred dollars above the federal poverty guidelines but does not exceed two thousand seven hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be ten percent of the amount of tax owed under this article by the qualified taxpayer.~~

~~(c) Qualified taxpayers who are husband and wife and who file separate returns shall be entitled to a tax credit based on the following:~~

~~(1) If modified federal adjusted gross income is at or below fifty percent of the federal poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax owed under this article by the qualified taxpayer;~~

~~(2) If modified federal adjusted gross income is greater than fifty percent of the federal poverty guidelines but does not exceed one hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be ninety percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(3) If modified federal adjusted gross income is greater than one hundred fifty dollars above fifty percent of the federal poverty guidelines but does not exceed three hundred dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be eighty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(4) If modified federal adjusted gross income is greater than three hundred dollars above fifty percent of the federal poverty guidelines but does not exceed four hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be seventy percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(5) If modified federal adjusted gross income is greater than four hundred fifty dollars above fifty percent of the federal poverty guidelines but does not exceed six hundred dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be sixty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(6) If modified federal adjusted gross income is greater than six hundred dollars above fifty percent of the federal poverty guidelines but does not exceed seven hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(7) If modified federal adjusted gross income is greater than seven hundred fifty dollars above fifty percent of the federal poverty guidelines but does not exceed nine hundred dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be forty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(8) If modified federal adjusted gross income is greater than nine hundred dollars above fifty percent of the federal poverty guidelines but does not exceed one thousand fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~(9) If modified federal adjusted gross income is greater than one thousand fifty dollars above fifty percent of the federal poverty guidelines but does not exceed one thousand two hundred dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer; or~~

~~(10) If modified federal adjusted gross income is greater than one thousand two hundred dollars above fifty percent of the federal poverty guidelines but does not exceed one thousand three hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit shall be ten percent of the amount of tax owed under this article by the qualified taxpayer.~~

~~(d) The Tax Commissioner shall develop and publish on an annual basis two indexed tax credit tables. One tax table shall be for qualified taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint return, or as an individual entitled to file as a surviving spouse and one tax table shall be for qualified taxpayers who are husband and wife and who file separate returns. The indexed tax credit tables shall be based on subsections (b) and (c) of this section~~

(a) For each taxable year beginning after December 31, 2021, a West Virginia resident who is eligible for the federal earned income tax credit under Section 32 of the Internal Revenue Code is eligible for a credit under this article equal to 25 percent of the amount of the federal earned income tax credit that the individual:

(A) Is eligible to receive in the taxable year; and

(B) Claimed for the taxable year under Section 32 of the Internal Revenue Code.

(b) If the West Virginia resident is not eligible for the federal earned income tax credit under Section 32 of the Internal Revenue Code solely because the resident does not have a qualifying child the resident is eligible for a credit under this section equal to 25 percent of the amount of the federal earned income tax credit that the individual would have been eligible for if he or she had one qualifying child.

(c) If other credits allowed are used by the taxpayer for the taxable year, the West Virginia Earned Income Tax Credit shall be applied last.

(d) If the amount of the credit allowed exceeds the taxpayer’s West Virginia personal income tax liability, the commissioner shall treat the excess as an overpayment and shall pay the taxpayer the amount of the excess, without interest.

(e) The commissioner shall make an effort every year to inform taxpayers who may be eligible to receive the credit provided under this section.

NOTE: The purpose of this bill is to create the West Virginia Earned Income Tax Credit. The bill authorizes a refundable tax credit based upon the federal earned income tax credit. The bill determines eligibility for the credit. The bill determines the amount of the credit.

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