

H. B. 2373

(By Delegates Fleischauer, Skaff and Stowers)
[Introduced February 13, 2013; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to repeal §11-21-22a of the Code of West Virginia, 1931, as amended; to amend and reenact §11-21-22 and §11-21-22b of said code, all relating to personal income tax; creating the West Virginia Earned Income Tax Credit; and authorizing a refundable tax credit based upon the federal earned income tax credit.

Be it enacted by the Legislature of West Virginia:

That §11-21-22a of the Code of West Virginia, 1931, as amended be repealed; that §11-21-22 and §11-21-22b of said code be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

§11-21-22. ~~Working family tax credit~~ Refundable West Virginia Earned Income Tax Credit.

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

18 **§11-21-22b. Eligibility; Amount of credit.**

19 ~~(a) For each taxable year beginning on or after January 1,~~
20 ~~2007, the tax credit authorized by section twenty-two of this~~
21 ~~article may be used by every qualified taxpayer and shall be~~
22 ~~calculated in accordance with subsections (b) and (c) of this~~
23 ~~section: *Provided*, That for the taxable year beginning on January~~
24 ~~1, 2007, the qualified taxpayer shall be allowed to claim only~~

1 ~~fifty percent of the amount of the tax credit.~~

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

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

10 ~~(2) If modified federal adjusted gross income is greater than~~
11 ~~the federal poverty guidelines but does not exceed \$300 above the~~
12 ~~federal poverty guidelines based on family size, the amount of~~
13 ~~credit allowable shall be ninety percent of the amount of tax owed~~
14 ~~under this article by the qualified taxpayer;~~

15 ~~(3) If modified federal adjusted gross income is greater than~~
16 ~~\$300 above the federal poverty guidelines but does not exceed \$600~~
17 ~~above the federal poverty guidelines based on family size, the~~
18 ~~amount of credit allowable shall be eighty percent of the amount of~~
19 ~~tax owed under this article by the qualified taxpayer;~~

20 ~~(4) If modified federal adjusted gross income is greater than~~
21 ~~\$600 above the federal poverty guidelines but does not exceed \$900~~
22 ~~above the federal poverty guidelines based on family size, the~~
23 ~~amount of credit allowable shall be seventy percent of the amount~~
24 ~~of tax owed under this article by the qualified taxpayer;~~

1 ~~(5) If modified federal adjusted gross income is greater than~~
2 ~~\$900 above the federal poverty guidelines but does not exceed~~
3 ~~\$1,200 above the federal poverty guidelines based on family size,~~
4 ~~the amount of credit allowable shall be sixty percent of the amount~~
5 ~~of tax owed under this article by the qualified taxpayer;~~

6 ~~(6) If modified federal adjusted gross income is greater than~~
7 ~~\$1,200 above the federal poverty guidelines but does not exceed~~
8 ~~\$1,500 above the federal poverty guidelines based on family size,~~
9 ~~the amount of credit allowable shall be fifty percent of the amount~~
10 ~~of tax owed under this article by the qualified taxpayer;~~

11 ~~(7) If modified federal adjusted gross income is greater than~~
12 ~~\$1,500 above the federal poverty guidelines but does not exceed~~
13 ~~\$1,800 above the federal poverty guidelines based on family size,~~
14 ~~the amount of credit allowable shall be forty percent of the amount~~
15 ~~of tax owed under this article by the qualified taxpayer;~~

16 ~~(8) If modified federal adjusted gross income is greater than~~
17 ~~\$1,800 above the federal poverty guidelines but does not exceed~~
18 ~~\$2,100 above the federal poverty guidelines based on family size,~~
19 ~~the amount of credit allowable shall be thirty percent of the~~
20 ~~amount of tax owed under this article by the qualified taxpayer;~~

21 ~~(9) If modified federal adjusted gross income is greater than~~
22 ~~\$2,100 above the federal poverty guidelines but does not exceed~~
23 ~~\$2,400 above the federal poverty guidelines based on family size,~~
24 ~~the amount of credit allowable shall be twenty percent of the~~

1 ~~amount of tax owed under this article by the qualified taxpayer; or~~

2 ~~(10) If modified federal adjusted gross income is greater than~~
3 ~~\$2,400 above the federal poverty guidelines but does not exceed~~
4 ~~\$2,700 above the federal poverty guidelines based on family size,~~
5 ~~the amount of credit allowable shall be ten percent of the amount~~
6 ~~of tax owed under this article by the qualified taxpayer.~~

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

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

14 ~~(2) If modified federal adjusted gross income is greater than~~
15 ~~fifty percent of the federal poverty guidelines but does not exceed~~
16 ~~\$150 above fifty percent of the federal poverty guidelines based on~~
17 ~~family size, the amount of credit allowable shall be ninety percent~~
18 ~~of the amount of tax owed under this article by the qualified~~
19 ~~taxpayer;~~

20 ~~(3) If modified federal adjusted gross income is greater than~~
21 ~~\$150 above fifty percent of the federal poverty guidelines but does~~
22 ~~not exceed \$300 above fifty percent of the federal poverty~~
23 ~~guidelines based on family size, the amount of credit allowable~~
24 ~~shall be eighty percent of the amount of tax owed under this~~

1 ~~article by the qualified taxpayer;~~ (4) ~~If modified federal~~
2 ~~adjusted gross income is greater than \$300 above fifty percent of~~
3 ~~the federal poverty guidelines but does not exceed \$450 above fifty~~
4 ~~percent of the federal poverty guidelines based on family size, the~~
5 ~~amount of credit allowable shall be seventy percent of the amount~~
6 ~~of tax owed under this article by the qualified taxpayer;~~

7 (5) ~~If modified federal adjusted gross income is greater than~~
8 ~~\$450 above fifty percent of the federal poverty guidelines but does~~
9 ~~not exceed \$600 above fifty percent of the federal poverty~~
10 ~~guidelines based on family size, the amount of credit allowable~~
11 ~~shall be sixty percent of the amount of tax owed under this article~~
12 ~~by the qualified taxpayer;~~

13 (6) ~~If modified federal adjusted gross income is greater than~~
14 ~~\$600 above fifty percent of the federal poverty guidelines but does~~
15 ~~not exceed \$750 above fifty percent of the federal poverty~~
16 ~~guidelines based on family size, the amount of credit allowable~~
17 ~~shall be fifty percent of the amount of tax owed under this article~~
18 ~~by the qualified taxpayer;~~

19 (7) ~~If modified federal adjusted gross income is greater than~~
20 ~~\$750 above fifty percent of the federal poverty guidelines but does~~
21 ~~not exceed \$900 above fifty percent of the federal poverty~~
22 ~~guidelines based on family size, the amount of credit allowable~~
23 ~~shall be forty percent of the amount of tax owed under this article~~
24 ~~by the qualified taxpayer;~~

1 ~~(8) If modified federal adjusted gross income is greater than~~
2 ~~\$900 above fifty percent of the federal poverty guidelines but does~~
3 ~~not exceed \$1,050 above fifty percent of the federal poverty~~
4 ~~guidelines based on family size, the amount of credit allowable~~
5 ~~shall be thirty percent of the amount of tax owed under this~~
6 ~~article by the qualified taxpayer;~~

7 ~~(9) If modified federal adjusted gross income is greater than~~
8 ~~\$1,050 above fifty percent of the federal poverty guidelines but~~
9 ~~does not exceed \$1,200 above fifty percent of the federal poverty~~
10 ~~guidelines based on family size, the amount of credit allowable~~
11 ~~shall be twenty percent of the amount of tax owed under this~~
12 ~~article by the qualified taxpayer; or~~

13 ~~(10) If modified federal adjusted gross income is greater than~~
14 ~~\$1,200 above fifty percent of the federal poverty guidelines but~~
15 ~~does not exceed \$1,350 above fifty percent of the federal poverty~~
16 ~~guidelines based on family size, the amount of credit shall be ten~~
17 ~~percent of the amount of tax owed under this article by the~~
18 ~~qualified taxpayer.~~

19 ~~(d) The Tax Commissioner shall develop and publish on an~~
20 ~~annual basis two indexed tax credit tables. One tax table shall be~~
21 ~~for qualified taxpayers who file as an individual, as a head of~~
22 ~~household, as a husband and wife who file a joint return, or as an~~
23 ~~individual entitled to file as a surviving spouse and one tax table~~
24 ~~shall be for qualified taxpayers who are husband and wife and who~~

1 ~~file separate returns. The indexed tax credit tables shall be~~
2 ~~based on subsections (b) and (c) of this section.~~

3 (a) For each taxable year beginning on or after January 1,
4 2013, a West Virginia resident who is eligible for the federal earned
5 income tax credit under Section 32 of the Internal Revenue Code is
6 eligible for a credit under this chapter equal to ten percent of
7 the amount of the federal earned income tax credit that the
8 individual:

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

10 (2) claimed for the taxable year; under Section 32 of the
11 Internal Revenue Code.

12 (b) If other credits allowed are utilized by the taxpayer for
13 the taxable year, the West Virginia Earned Income Tax Credit shall
14 be applied last.

15 (c) If the amount of the credit allowed exceeds the taxpayer's
16 West Virginia personal income tax liability, the commissioner shall
17 treat such excess as an overpayment and shall pay the taxpayer the
18 amount of such excess, without interest.

19 (d) The commissioner shall make efforts every year to inform
20 taxpayers who may be eligible to receive the credit provided under
21 this section.

NOTE: The purpose of this bill is to provide low and moderate income workers with a refundable state tax credit based on the

federal earned income tax credit. Current law provides for a nonrefundable tax credit based on federal poverty guidelines.

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