

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 418

**FISCAL
NOTE**

BY SENATORS MILLER, LAIRD AND BEACH

[Introduced January 28, 2016;

Referred to the Committee on Finance.]

1 A BILL to repeal §11-21-22a of the Code of West Virginia, 1931, as amended; to amend and
 2 reenact §11-15-3a of said code; and to amend and reenact §11-21-22 and §11-21-22b of
 3 said code, all relating generally to taxation; requiring sales tax on the sale of food;
 4 dedicating revenue generated by sales tax on food to Public Employees Insurance
 5 Agency; creating West Virginia Earned Income Tax Credit; authorizing a refundable tax
 6 credit based upon the federal Earned Income Tax Credit; determining eligibility for the
 7 credit; and determining amount of the credit.

Be it enacted by the Legislature of West Virginia:

1 That §11-21-22a of the Code of West Virginia, 1931, as amended, be repealed; that §11-
 2 15-3a of said code be amended and reenacted; and that §11-21-22 and §11-21-22b of said code
 3 be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

**§11-15-3a. Rate of tax on food and food ingredients intended for human consumption;
 reductions and cessations of tax.**

1 (a) *Rate of tax on food and food ingredients and usage of revenue generated.* --
 2 Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary:

3 ~~(1) *Rate reduction.* --~~ The rate of tax on sales, purchases and uses of food and food
 4 ingredients intended for human consumption after June 30, ~~2008~~ 2016, shall be three percent of
 5 its sales price, as defined in section two, article fifteen-b of this chapter. All revenue generated by
 6 this section shall be dedicated to the employer share of the aggregate premium cost-sharing for
 7 the Public Employees Insurance Agency required by article sixteen, chapter five of this code with
 8 respect to public employees health care services.

9 ~~(2) *Additional rate reduction.* --~~ The rate of tax on sales, purchases and uses of food and
 10 food ingredients as defined in that section that is intended for human consumption after December
 11 31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012,
 12 the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section

13 ~~that is intended for human consumption shall be one percent of its sales price, as defined in that~~
14 ~~section.~~

15 ~~(3) *Contingent termination of tax on food.* -- The tax on sales, purchases and uses of food~~
16 ~~and food ingredients as defined in section two, article fifteen-b of this chapter that is intended for~~
17 ~~human consumption shall cease after June 30, 2013, and no such tax shall be imposed on sales,~~
18 ~~purchases and uses of food and food ingredients so defined: *Provided*, That the cessation of tax~~
19 ~~after June 30, 2013, authorized by this subsection shall be suspended if the balance of funds as~~
20 ~~of December 31, 2012, in the Revenue Shortfall Reserve Fund established in section twenty,~~
21 ~~article two, chapter eleven-b of this code does not equal or exceed twelve and one-half percent~~
22 ~~of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2012. Such~~
23 ~~suspension shall terminate, and the cessation of tax shall proceed, beginning on July 1 of any~~
24 ~~calendar year beginning after December 31, 2013, in which the balance of funds as of December~~
25 ~~31 of the preceding fiscal year in said Revenue Shortfall Reserve Fund equals or exceeds twelve~~
26 ~~and one-half percent of the General Revenue Fund budgeted for the immediately succeeding~~
27 ~~fiscal year.~~

28 (b) *Calculation of tax on fractional parts of a dollar.* -- The tax computation under this
29 section shall be carried to the third decimal place and the tax rounded up to the next whole cent
30 whenever the third decimal place is greater than four and rounded down to the lower whole cent
31 whenever the third decimal place is four or less. The seller may elect to compute the tax due on
32 a transaction on a per item basis or on an invoice basis provided the method used is consistently
33 used during the reporting period.

34 (c) *Federal Food Stamp and Women, Infants and Children programs, other exemptions.* -
35 - Nothing in this section affects application of the exemption from tax provided in section nine of
36 this article for food purchased by an eligible person using food stamps, electronic benefits transfer
37 cards or vouchers issued by or pursuant to authorization of the United States Department of
38 Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name

39 called, or the Women, Infants and Children (WIC) program, or application of any other exemption
40 from tax set forth in this article or article fifteen-a of this chapter.

ARTICLE 21. PERSONAL INCOME TAX.

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

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

§11-21-22b. Amount of credit.

1 (a) (1) For each taxable year beginning after December 31, 2015, a West Virginia resident
2 who is eligible for the federal earned income tax credit under Section 32 of the Internal Revenue
3 Code is eligible for a credit under this article equal to twenty-five percent of the amount of the
4 federal earned income tax credit that the individual:

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

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

7 (2) If the West Virginia resident is not eligible for the federal earned income tax credit
8 under Section 32 of the Internal Revenue Code solely because the resident does not have a
9 qualifying child the resident is eligible for a credit under this section equal to twenty-five percent

10 of the amount of the federal earned income tax credit that the individual would have been eligible
11 for if he or she had one qualifying child.

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

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

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

NOTE: The purpose of this bill is to place a sales tax on the sale of food. The bill dedicates the revenue generated by the sales tax on food to the Public Employees Insurance Agency. The bill creates 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.

§11-21-22b has been completely rewritten; therefore, it has been completely underscored.