

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 683

BY SENATORS JEFFRIES, MILLER, BEACH, FACEMIRE,

OJEDA, PLYMALE AND ROMANO

[Introduced March 20, 2017; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-12-75 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §11-15-3 and §11-15-8 of said code; to amend said code by adding
3 thereto two new sections, designated §11-15-3d and §11-15-3e; to amend and reenact
4 §11-15A-2 of said code; to amend and reenact §11-21-4e, §11-21-12 and §11-21-16 of
5 said code; to amend said code by adding thereto a new section, designated §11-21-22d;
6 and to amend and reenact §11-24-4 of said code, all relating to taxation to enact a fiscally
7 responsible state budget; increasing the tax on corporations holding more than ten
8 thousand acres of land and making it an annual assessment; increasing the rate of the
9 consumers sales and service tax; increasing the rate of the use tax; providing effective
10 dates for those rate changes; changing the words "six percent" to the current consumers
11 sales and service tax rate or use tax rate where those terms are used under certain
12 sections of chapter eleven of the code; imposing the consumers sales tax on
13 telecommunications service and ancillary services; imposing the consumers sales and
14 service tax on the sale of certain digital goods; imposing the consumer sales and service
15 tax on personal services; adjusting the personal income tax rates to lower rates on taxable
16 income between \$10,000 and \$150,000 for joint filers and between \$5,000 and \$75,000
17 for individuals filing separate returns; creating new personal income tax rates for higher
18 earners; exempting Social Security benefits from the personal income tax if the taxpayer's
19 total taxable income is below \$50,000; amending the West Virginia exemption for
20 residents such that it is reduced for residents with more than \$100,000 in West Virginia
21 taxable income; exempting all monetary benefits derived from military retirement from
22 personal income tax obligations; creating West Virginia Earned Income Tax Credit;
23 authorizing a refundable tax credit based upon the federal Earned Income Tax Credit;
24 determining eligibility for the credit; determining amount of the credit; authorizing rule-
25 making authority; replacing the flat corporate net income tax rate with a tiered rate that is
26 consistent with the personal income tax rates, thereby reducing the tax rate for businesses

27 with lower annual income and increasing the tax rate for higher earning businesses; and
 28 setting forth effective dates.

Be it enacted by the Legislature of West Virginia:

1 That §11-12-75 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §11-15-3 and §11-15-8 of said code be amended and reenacted; that said code
 3 be amended by adding thereto two new sections, designated §11-15-3d and §11-15-3e; that §11-
 4 15A-2 of said code be amended and reenacted; that §11-21-4e, §11-21-12 and §11-21-16 of said
 5 code be amended and reenacted; that said code be amended by adding thereto a new section,
 6 designated §11-21-22d; and that §11-24-4 of said code be amended and reenacted, all to read
 7 as follows:

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-75. Tax on corporations holding more than ten thousand acres of land.

1 Every corporation, including railroad and other corporations, holding more than ten
 2 thousand acres of land in this state shall pay to the state a tax of ~~5¢~~ 50¢ per acre for the privilege
 3 of acquiring and holding of land so acquired and held by it in addition to ten thousand acres. ~~Such~~
 4 The corporations shall, under the hand of the president and seal of the corporation, and attested
 5 by the secretary, apply to the Secretary of State for a certificate authorizing the holding of the
 6 number of acres stated in such application, and pay the tax thereon; and ~~it shall be the duty of~~
 7 the Secretary of State ~~to~~ shall issue to ~~such~~ the corporation a certificate stating the amount of tax
 8 paid and the number of acres on which paid, and the number of acres the corporation is thereby
 9 entitled to hold. Hereafter a domestic corporation shall state in its agreement for incorporation
 10 and a foreign corporation shall state in its application for authority to hold property and transact
 11 business in this state, the number of acres it desires to hold, and pay the taxes thereon to the
 12 Secretary of State before the certificate of incorporation or of authority is issued. If any corporation
 13 desires to increase the number of acres it may hold, it shall make application therefor to the
 14 Secretary of State. ~~Such~~ The application shall be signed by the president of the corporation,

15 sealed with its corporate seal, and attested by the secretary, and shall state the number of acres
 16 it then holds and the number of acres it desires to hold. The Secretary of State shall collect the
 17 proper amount of tax and shall issue to the corporation a certificate reciting the number of acres
 18 the corporation may hold and the amount of tax paid to him or her. If any corporation shall fails to
 19 comply with the provisions of this section it shall be is liable to a fine of not less than \$25 nor more
 20 than \$500, and be liable to pay ~~such~~ the tax due to the state with a penalty of ten percent on the
 21 total amount due, and be liable to all the provisions of sections eighty-six and eighty-seven of this
 22 article so far as they are applicable. All moneys received by the Secretary of State under the
 23 provisions of this section shall be reported to the Auditor, and paid into the State Treasury in the
 24 manner prescribed for the payment of other moneys received by ~~him~~ the Secretary of State. ~~No~~
 25 ~~corporation shall be required to pay the said tax of 5¢ per acre for license to hold any land in this~~
 26 ~~state in excess of ten thousand acres for which such corporation shall have already paid a license~~
 27 ~~tax at the time this law takes effect~~

28 ~~A corporation which has paid said tax may assign, without further payment by the assignee~~
 29 ~~of the tax required hereunder, its license or authority to hold lands in excess of ten thousand acres~~
 30 ~~provided the assignee shall be a corporation organized solely to conduct the same general~~
 31 ~~business and with the same stock ownership as the original licensee and such assignment be~~
 32 ~~accompanied by a conveyance and transfer to such assignee corporation of all the lands and~~
 33 ~~other assets of the original licensee. Such assignment shall be filed with the Secretary of State~~
 34 ~~who, upon being satisfied that the assignee corporation has conformed to the foregoing~~
 35 ~~requirements, shall issue a certificate authorizing such assignee corporation to hold the same~~
 36 ~~number of acres the original licensee was authorized to hold~~

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

1 (a) *Vendor to collect.* -- For the privilege of selling tangible personal property or custom
 2 software and for the privilege of furnishing certain selected services defined in sections two and

3 eight of this article, the vendor shall collect from the purchaser the tax as provided under this
4 article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax
5 Commissioner in accordance with ~~the provisions of~~ this article or article fifteen-b of this chapter.

6 (b) *Amount of tax.* -- The general consumer sales and service tax imposed by this article
7 shall be at the rate of 6¢ on the dollar of sales or services, excluding gasoline and special fuel
8 sales, which remain taxable at the rate of 5¢ on the dollar of sales: Provided, That on and after
9 July 1, 2017, the tax imposed by this article shall be 7¢ on the dollar of sales or services, excluding
10 gasoline and special fuel sales, which remain taxable at the rate of 5¢ on the dollar of sale.

11 (c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* -- There shall be no
12 tax on sales where the monetary consideration is 5¢ or less. The amount of the tax shall be
13 computed as follows:

14 (1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.

15 (2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.

16 (3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.

17 (4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.

18 (5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.

19 (6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.

20 (7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any
21 fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the
22 dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;
23 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional
24 part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in
25 excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For
26 example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,
27 both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,
28 both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to

29 \$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall
30 be calculated as provided in subsection (d) of this subsection and this subsection (c) does not
31 apply to sales made after December 31, 2003.

32 (d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* -- Beginning
33 January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the
34 third decimal place, and the tax rounded up to the next whole cent whenever the third decimal
35 place is greater than four and rounded down to the lower whole cent whenever the third decimal
36 place is four or less. The vendor may elect to compute the tax due on a transaction on a per item
37 basis or on an invoice basis provided the method used is consistently used during the reporting
38 period.

39 (e) *No aggregation of separate sales transactions, exception for coin-operated devices.* -
40 - Separate sales, such as daily or weekly deliveries, ~~shall~~ may not be aggregated for the purpose
41 of computation of the tax even though the sales are aggregated in the billing or payment therefor.
42 Notwithstanding any other provision of this article, coin-operated amusement and vending
43 machine sales shall be aggregated for the purpose of computation of this tax.

44 (f) *Rate of tax on certain mobile homes.* -- Notwithstanding any provision of this article to
45 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the
46 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal
47 to six percent of fifty percent of the sales price: *Provided, That on and after July 1, 2017,*
48 *notwithstanding any provision of this article to the contrary, the tax levied on sales of mobile*
49 *homes to be used by the owner thereof as his or her principal year-round residence and dwelling*
50 *shall be an amount equal to seven percent of fifty percent of the sales price.*

51 (g) *Construction; custom software.* -- After December 31, 2003, whenever the words
52 "tangible personal property" or "property" appear in this article, the same shall also include the
53 words "custom software".

54 (h) *Computation of tax on sales of gasoline and special fuel.* -- The method of computation

55 of tax provided in this section does not apply to sales of gasoline and special fuel

56 (i) Notwithstanding any provision of this code to the contrary, on and after July 1, 2017,
57 when the words “six percent” appear in the following subsections, sections or articles of this code,
58 those words shall mean “a percentage equal to the consumers sales and service tax rate”: Section
59 eight-b, article fifteen, chapter eleven; subdivision (6), subsection (b), section nine, article fifteen,
60 chapter eleven; and subsection (b), section eleven, article ten, chapter eleven: *Provided*, That
61 notwithstanding any provisions of this code to the contrary, on and after July 1, 2017, when the
62 words “six percent” appear in subsection (c), section ten, article fifteen-a, chapter eleven, those
63 words shall mean “a percentage equal to the use tax rate.”

§11-15-3d. Imposition of consumers sales tax on telecommunications service and ancillary services.

1 (a) Notwithstanding the provisions of section eight of this article or any other provision of
2 this code, on and after July 1, 2017, telecommunications service and ancillary services, as defined
3 in article fifteen-b of this chapter, are subject to the consumer sales and service tax imposed by
4 this article, and the use tax imposed by article fifteen-a of this chapter: *Provided*, That payment
5 of the tax imposed under this article or under article fifteen-a of this chapter on prepaid wireless
6 services is sufficient to fulfill the mandate of this section, and prepaid wireless services are not
7 subjected to double taxation under this article: *Provided, however*, That this section does not
8 prevent imposition of any other lawfully imposed tax or fee under any state or federal law, or the
9 laws of any subdivision thereof on such prepaid wireless services.

10 (b) The tax imposed by this section is in addition to any municipal utilities tax, municipal
11 consumers sales and service tax and use tax, or other tax lawfully imposed on telephone service,
12 telecommunications service and ancillary services.

13 (c) The sale of telecommunications service and ancillary services on which tax is imposed
14 by this section are subject to sourcing rules of the Streamlined Sales Tax Agreement as defined
15 in article fifteen-b of this chapter.

16 (d) Notwithstanding the fact that a service provider did not meet the threshold amount for
 17 the previous calendar year that would cause accelerated payment to be made in the current year,
 18 the accelerated payment rule imposed under subsection (g), section sixteen of this article applies
 19 to the tax imposed by this section, if the service provider's total combined monthly remittance of
 20 the taxes levied by this article and article fifteen-a of this chapter for any calendar month beginning
 21 on and after July 1, 2017, exceeds, or can reasonably be expected to exceed, \$100,000.

§11-15-3e. Sales tax applies to digital goods.

1 Notwithstanding any other provision of this code to the contrary, the general consumer
 2 sales and service tax imposed by this article includes and applies to the following, whether
 3 electronically or digitally delivered, streamed or accessed and whether purchased singly, by
 4 subscription or in any other manner, including maintenance, updates and support:

- 5 (1) Video;
 6 (2) Photographs;
 7 (3) Books;
 8 (4) Any other taxable printed matter;
 9 (5) Applications, commonly known as apps;
 10 (6) Games;
 11 (7) Music;
 12 (8) Any other audio, including satellite radio service;
 13 (9) Canned software, notwithstanding the function performed; or
 14 (10) Any other taxable tangible personal property electronically or digitally delivered,
 15 streamed or accessed.

§11-15-8. Furnishing of services included; exceptions.

1 The provisions of this article apply not only to selling tangible personal property and
 2 custom software, but also to the furnishing of all services, except professional and personal
 3 services, and except those services furnished by businesses subject to the control of the Public

4 Service Commission when the service or the manner in which it is delivered is subject to regulation
 5 by the Public Service Commission. Effective July 1, 2017, this article applies to personal services
 6 unless explicitly excepted by the provisions of this section or other provision of this code.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; six percent tax rate; inclusion of services as taxable; transition rules; allocation of tax and transfers.

1 (a) ~~An excise~~ A tax is hereby levied and imposed on the use in this state of tangible
 2 personal property, custom software or taxable services, to be collected and paid as provided in
 3 this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the
 4 property or taxable services, except as otherwise provided in this article: Provided, That on and
 5 after July 1, 2017, the tax imposed by this article shall be collected and paid, as provided in this
 6 article or article fifteen-b of this chapter, at the rate of seven percent of the purchase price of the
 7 property or taxable services, except as otherwise provided in this article.

8 (b) *Calculation of tax on fractional parts of a dollar.* -- The tax computation under
 9 subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to
 10 the next whole cent whenever the third decimal place is greater than four and rounded down to
 11 the lower whole cent whenever the third decimal place is four or less. The vendor may elect to
 12 compute the tax due on a transaction on a per item basis or on an invoice basis provided the
 13 method used is consistently used during the reporting period.

14 (c) "Taxable services," for the purposes of this article, means services of the nature that
 15 are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words
 16 "tangible personal property" or "property" appear, the same shall include the words "or taxable
 17 services," where the context so requires.

18 (d) Use tax is hereby imposed upon every person using tangible personal property, custom
 19 software or taxable service within this state. That person's liability is not extinguished until the tax
 20 has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in

21 business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect
 22 the tax imposed by this article, relieves the purchaser from further liability for the tax to which the
 23 receipt refers.

24 (e) Purchases of tangible personal property or taxable services made for the government
 25 of the United States or any of its agencies by ultimate consumers is subject to the tax imposed
 26 by this section. Industrial materials and equipment owned by the federal government within the
 27 State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject
 28 to use tax when sold, if the industrial materials and equipment would not be subject to use taxes
 29 if sold outside of the state for use in West Virginia.

30 (f) This article does not apply to purchases made by counties or municipal corporations.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax -- Taxable years beginning on or after January 1, 1987.

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

9 If the West Virginia 10 taxable income is: 11 12 Not over \$10,000 13 14 Over \$10,000 but not 15 over \$25,000 16 17 Over \$25,000 but not 18 over \$40,000 19	The tax is: 3% of the taxable income \$300.00 plus 4% <u>3.75%</u> of excess over \$10,000 \$900.00 plus 4.5% <u>\$862.50</u> plus 4.25% of excess over \$25,000
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20	Over \$40,000 but not	\$1,575.00 plus 6% <u>\$1,500.00</u>
21	over \$60,000	<u>plus 5.75% of excess</u>
22		<u>over \$40,000</u>
23		
24	Over \$60,000, <u>but not</u>	\$2,775.00 plus 6.5% <u>\$2,650.00</u>
25	<u>over \$150,000</u>	<u>plus 6.25% of excess</u>
26		<u>over \$60,000</u>
27		
28	<u>Over \$150,000, but not</u>	<u>\$8,275.00 plus 8% of excess</u>
29	<u>over \$250,000</u>	<u>over \$150,000</u>
30		
31	<u>Over \$250,000</u>	<u>\$16,275 plus 9% of excess</u>
32		<u>over \$250,000</u>
33		

34 (b) Rate of tax on married individuals filing separate returns. -- In the case of husband and
 35 wife filing separate returns under this article for the taxable year, the tax imposed by section three
 36 of this article on the West Virginia taxable income of each spouse shall be determined in
 37 accordance with the following table:

38	If the West Virginia	The tax is:
39	taxable income is:	
40		
41	Not over \$5,000	3% of the taxable income
42		
43	Over \$5,000 but not	\$150.00 plus 4% <u>3.75%</u> of
44	over \$12,500	<u>excess over \$5,000</u>
45		
46	Over \$12,500 but not	\$450.00 plus 4.5% <u>\$431.25</u>
47	over \$20,000	<u>plus 4.25% of excess</u>
48		<u>over \$12,500</u>
49		
50	Over \$20,000 but not	\$787.50 plus 6% <u>\$750.00</u>
51	over \$30,000	<u>plus 5.75% of excess</u>
52		<u>over \$20,000</u>
53		
54	Over \$30,000, <u>but not</u>	\$1,387.50 plus 6.5% <u>\$1,325</u>
55	<u>over \$75,000</u>	<u>plus 6.25% of excess</u>
56		<u>over \$30,000</u>
57		
58	<u>Over \$75,000, but not</u>	<u>\$4,137.50 plus 8% of</u>
59	<u>over \$125,000</u>	<u>excess over \$75,000</u>
60		

61	<u>Over \$125,000</u>	<u>\$8,137.50 plus 9% of excess</u>
62		<u>over \$125,000</u>
63	<hr/>	

64 (c) Applicability of this section. -- The provisions of this section, as amended ~~by this act~~,
 65 shall be applicable in determining the rate of tax imposed by this article for all taxable years
 66 beginning after December 31, 1986, and shall be in lieu of the rates of tax specified in section
 67 four-d of this article. Amendments made to this section during the regular session of the
 68 Legislature in 2017, shall be applicable in determining the rate of tax imposed by this article for
 69 all taxable years beginning after December 31, 2016.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* -- The West Virginia adjusted gross income of a resident individual means his
 2 or her federal adjusted gross income as defined in the laws of the United States for the taxable
 3 year with the modifications specified in this section.

4 (b) *Modifications increasing federal adjusted gross income.* -- There shall be added to
 5 federal adjusted gross income unless already included therein the following items:

6 (1) Interest income on obligations of any state other than this state or of a political
 7 subdivision of any other state unless created by compact or agreement to which this state is a
 8 party;

9 (2) Interest or dividend income on obligations or securities of any authority, commission
 10 or instrumentality of the United States, which the laws of the United States exempt from federal
 11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal
 13 income tax purposes for the taxable year that is not allowed as a deduction under this article for
 14 the taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or
 16 securities the income from which is exempt from tax under this article, to the extent deductible in
 17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as
19 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the
20 federal taxable year;

21 (6) The amount of a lump sum distribution for which the taxpayer has elected under
22 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for
23 federal income tax purposes; and

24 (7) Amounts withdrawn from a medical savings account established by or for an individual
25 under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article
26 sixteen of said chapter that are used for a purpose other than payment of medical expenses, as
27 defined in those sections.

28 (c) *Modifications reducing federal adjusted gross income.* -- There shall be subtracted from
29 federal adjusted gross income to the extent included therein:

30 (1) Interest income on obligations of the United States and its possessions to the extent
31 includable in gross income for federal income tax purposes;

32 (2) Interest or dividend income on obligations or securities of any authority, commission
33 or instrumentality of the United States or of the State of West Virginia to the extent includable in
34 gross income for federal income tax purposes but exempt from state income taxes under the laws
35 of the United States or of the State of West Virginia, including federal interest or dividends paid
36 to shareholders of a regulated investment company, under Section 852 of the Internal Revenue
37 Code for taxable years ending after June 30, 1987;

38 (3) Any amount included in federal adjusted gross income for federal income tax purposes
39 for the taxable year that is not included in federal adjusted gross income under this article for the
40 taxable year;

41 (4) The amount of any refund or credit for overpayment of income taxes imposed by this
42 state, or any other taxing jurisdiction, to the extent properly included in gross income for federal
43 income tax purposes;

44 (5) Annuities, retirement allowances, returns of contributions and any other benefit
45 received under the West Virginia Public Employees Retirement System, the West Virginia State
46 Teachers Retirement System, ~~and all forms of military retirement, including regular Armed Forces,
47 Reserves and National Guard,~~ including any survivorship annuities derived therefrom, to the
48 extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding
49 any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of
50 benefits received under the West Virginia Public Employees Retirement System, the West Virginia
51 State Teachers Retirement System and, including any survivorship annuities derived therefrom,
52 to the extent includable in gross income for federal income tax purposes for taxable years
53 beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal
54 retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total
55 modification under this paragraph ~~shall~~ may not exceed \$2,000 per person receiving retirement
56 benefits and this limitation shall apply to all returns or amended returns filed after December 31,
57 1988;

58 (6) Retirement income received in the form of pensions and annuities after December 31,
59 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West
60 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
61 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any
62 survivorship annuities derived from any of these programs, to the extent includable in gross
63 income for federal income tax purposes;

64 (7) ~~(A) For taxable years beginning after December 31, 2000, and ending prior to January~~
65 ~~1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the~~
66 ~~Armed Forces of the United States of America with the product thereof multiplied by the first~~
67 ~~\$30,000 of military retirement income, including~~ In recognition of the distinct and sacrificial nature
68 of a career in military service, involving repetitive periods of hazardous duty assignments,
69 enduring numerous family separations and being subjected to extreme personal hardships, all

70 forms of military retirement income from the regular Armed Forces, Reserves and National Guard
71 paid by the United States or by this state after ~~December 31, 2000~~ December 31, 2017, including
72 any survivorship annuities derived therefrom, to the extent included in gross income for federal
73 income tax purposes for the taxable year.

74 ~~(B) For taxable years beginning after December 31, 2002, the first \$20,000 of military~~
75 ~~retirement income, including retirement income from the regular Armed Forces, Reserves and~~
76 ~~National Guard paid by the United States or by this state after December 31, 2002, including any~~
77 ~~survivorship annuities, to the extent included in gross income for federal income tax purposes for~~
78 ~~the taxable year.~~

79 ~~(C) In the event that any of the provisions of this subdivision are found by a court of~~
80 ~~competent jurisdiction to violate either the Constitution of this state or of the United States, or is~~
81 ~~held to be extended to persons other than specified in this subdivision, this subdivision shall~~
82 ~~become null and void by operation of law.~~

83 (8) For taxable years beginning after December 31, 2016, any social security benefits
84 received pursuant to Title 42, U.S.C., Chapter 7, if the taxpayer's total taxable income is below
85 \$50,000.

86 ~~(8)~~ (9) Federal adjusted gross income in the amount of \$8,000 received from any source
87 after December 31, 1986, by any person who has attained the age of sixty-five on or before the
88 last day of the taxable year, or by any person certified by proper authority as permanently and
89 totally disabled, regardless of age, on or before the last day of the taxable year, to the extent
90 includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person
91 has a medical certification from a prior year and he or she is still permanently and totally disabled,
92 a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the
93 federal disability income tax exclusion is acceptable: *Provided, however*, That:

94 (i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this
95 subsection is \$8,000 per person or more, no deduction shall may be allowed under this

96 subdivision; and

97 (ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this
98 subsection is less than \$8,000 per person, the total modification allowed under this subdivision
99 for all gross income received by that person shall be limited to the difference between \$8,000 and
100 the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

101 ~~(9)~~ (10) Federal adjusted gross income in the amount of \$8,000 received from any source
102 after December 31, 1986, by the surviving spouse of any person who had attained the age of
103 sixty-five or who had been certified as permanently and totally disabled, to the extent includable
104 in federal adjusted gross income for federal tax purposes: *Provided*, That:

105 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and ~~(8)~~ (9) of this
106 subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

107 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and ~~(8)~~ (9) of this
108 subsection is less than \$8,000 per person, the total modification allowed under this subdivision
109 for all gross income received by that person shall be limited to the difference between \$8,000 and
110 the sum of subdivisions (1), (2), (5), (6), (7) and ~~(8)~~ (9) of this subsection;

111 ~~(40)~~ (11) Contributions from any source to a medical savings account established by or
112 for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or
113 section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent
114 includable in federal adjusted gross income for federal tax purposes: *Provided*, That the amount
115 subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus
116 interest earned on the account. For married individuals filing a joint return, the maximum
117 deduction is computed separately for each individual;

118 ~~(44)~~ (12) For the 2006 taxable year only, severance wages received by a taxpayer from
119 an employer as the result of the taxpayer's permanent termination from employment through a
120 reduction in force and through no fault of the employee, not to exceed \$30,000. For purposes of
121 this subdivision:

122 (i) The term "severance wages" means any monetary compensation paid by the employer
123 in the taxable year as a result of permanent termination from employment in excess of regular
124 annual wages or regular annual salary;

125 (ii) The term "reduction in force" means a net reduction in the number of employees
126 employed by the employer in West Virginia, determined based on total West Virginia employment
127 of the employer's controlled group;

128 (iii) The term "controlled group" means one or more chains of corporations connected
129 through stock ownership with a common parent corporation if stock possessing at least fifty
130 percent of the voting power of all classes of stock of each of the corporations is owned directly or
131 indirectly by one or more of the corporations and the common parent owns directly stock
132 possessing at least fifty percent of the voting power of all classes of stock of at least one of the
133 other corporations;

134 (iv) The term "corporation" means any corporation, joint-stock company or association and
135 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
136 certificate of interest or ownership or similar written instrument; and

137 ~~(42)~~ (13) Any other income which this state is prohibited from taxing under the laws of the
138 United States.

139 (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or
140 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
141 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under
142 section nineteen of this article.

143 (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to
144 be made under this section by a partner or an S corporation shareholder, which relate to items of
145 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
146 section seventeen of this article.

147 (f) *Husband and wife.* -- If husband and wife determine their federal income tax on a joint

148 return but determine their West Virginia income taxes separately, they shall determine their West
 149 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
 150 determined separately.

151 (g) *Effective date.* -- (1) Changes in the language of this section enacted in the year 2000
 152 shall apply to taxable years beginning after December 31, 2000.

153 (2) Changes in the language of this section enacted in the year 2002 shall apply to taxable
 154 years beginning after December 31, 2002.

155 (3) Changes in the language of this section enacted in the year 2017 apply to taxable
 156 years beginning after December 31, 2017.

§11-21-16. West Virginia personal exemptions of resident individual.

1 ~~(a) *General.* -- For any tax imposed under the provisions of this article with respect to any~~
 2 ~~taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia~~
 3 ~~exemption of \$600 for each exemption for which he or she is entitled to a deduction for the taxable~~
 4 ~~year for federal income tax purposes. With respect to any taxable year beginning on or after~~
 5 ~~January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any~~
 6 ~~taxable year beginning on or after January 1, 1984, said exemption shall be \$800; and with~~
 7 ~~respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000.~~

8 ~~(b) *Husband and wife.* -- If the West Virginia income taxes of a husband and wife are~~
 9 ~~separately determined but their federal income tax is determined on a joint return, each of them~~
 10 ~~shall be separately entitled, with respect to any taxable year prior to January 1, 1983, to a West~~
 11 ~~Virginia exemption of \$600 for each federal exemption to which he or she would be separately~~
 12 ~~entitled for the taxable year if their federal income taxes had been determined on separate returns.~~
 13 ~~With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1,~~
 14 ~~1984, said exemption shall be \$700; with respect to any taxable year beginning on or after January~~
 15 ~~1, 1984, said exemption shall be \$800; and with respect to any taxable year beginning on or after~~
 16 ~~January 1, 1987, said exemption shall be \$2,000.~~

17 ~~(c) *Surviving spouse.* -- For taxable years beginning after December 31, 1986, a surviving~~
 18 ~~spouse shall be allowed one additional exemption of \$2,000 for the two taxable years beginning~~
 19 ~~after the year of death of the deceased spouse.~~

20 ~~For purposes of this section and section twelve of this article, a surviving spouse means~~
 21 ~~a taxpayer whose spouse died during the taxable year prior to the taxable year for which the~~
 22 ~~annual return is being filed and who has not remarried at any time before the end of the taxable~~
 23 ~~year for which the annual return is being filed.~~

24 ~~(d) *Certain dependents.* -- Notwithstanding any provisions in this section, for taxable years~~
 25 ~~beginning after December 31, 1986, a resident individual whose exemption amount for federal~~
 26 ~~tax purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986, shall be~~
 27 ~~allowed a single West Virginia exemption in the amount of \$500.~~

28 General. -- For any tax imposed under the provisions of this article with respect to any
 29 taxable year prior to January 1, 2017, a resident individual shall be allowed a West Virginia
 30 exemption, the amount of which shall be determined in accordance with the following table, for
 31 which he or she is entitled to a deduction for the taxable year for federal income tax purposes:

<u>If the West Virginia</u>	<u>The exemption is:</u>
<u>taxable income is:</u>	
<u>Not over \$100,000</u>	<u>\$2,000</u>
<u>Over \$100,000 but not</u>	
<u>over \$200,000</u>	<u>\$1,000</u>
<u>Over \$200,000 but not</u>	
<u>over \$250,000</u>	<u>\$500</u>
<u>Over \$250,000</u>	<u>\$0</u>

§11-21-22d. West Virginia Earned Income Tax Credit.

1 (a) For each taxable year beginning after December 31, 2016, 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 fifteen percent of the amount of the federal
4 earned income tax credit that the individual:

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

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

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

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

12 (d) The commissioner shall try every year to inform taxpayers who may be eligible to
13 receive the credit provided under this section.

14 (e) The commissioner may propose legislative rules for legislative approval in accordance
15 with article three, chapter twenty-nine-a of this code for the administration of the provisions of this
16 section, file administrative notices in the State Register in accordance with section three, article
17 two, chapter twenty-nine-a of this code, and develop and publish any instructions, any or all of
18 which as may be determined to be necessary to provide to taxpayers guidance and assistance
19 when claiming the West Virginia Earned Income Tax Credit.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.

1 *Primary tax.* -- (1) In the case of taxable periods beginning after June 30, 1967, and ending
2 prior to January 1, 1983, a tax is hereby imposed for each taxable year at the rate of six percent
3 per annum on the West Virginia taxable income of every domestic or foreign corporation engaging
4 in business in this state or deriving income from property, activity or other sources in this state,
5 except corporations exempt under section five.

6 (2) In the case of taxable periods beginning on or after January 1, 1983, and ending prior
7 to July 1, 1987, a tax is hereby imposed for each taxable year on the West Virginia taxable income

8 of every domestic or foreign corporation engaging in business in this state or deriving income
9 from property, activity or other sources in this state, except corporations exempt under section
10 five of this article, and any banks, banking associations or corporations, trust companies, building
11 and loan associations and savings and loan associations, at the rates which follow:

12 (A) On taxable income not in excess of \$50,000, the rate of six percent; and

13 (B) On taxable income in excess of \$50,000, the rate of seven percent.

14 (3) In the case of taxable periods beginning on or after July 1, 1987, a tax is hereby
15 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
16 corporation engaging in business in this state or deriving income from property, activity or other
17 sources in this state, except corporations exempt under section five of this article, at the rate of
18 nine and three-quarters percent. Beginning July 1, 1988, and on each July 1 thereafter for four
19 successive calendar years, the rate shall be reduced by fifteen one hundredths of one percent
20 per year, with such rate to be nine percent on and after July 1, 1992.

21 (4) In the case of taxable periods beginning on or after January 1, 2007, a tax is hereby
22 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
23 corporation engaging in business in this state or deriving income from property, activity or other
24 sources in this state, except corporations exempt under section five of this article, at the rate of
25 eight and three-quarters percent.

26 (5) In the case of taxable periods beginning on or after January 1, 2009, a tax is hereby
27 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
28 corporation engaging in business in this state or deriving income from property, activity or other
29 sources in this state, except corporations exempt under section five of this article, at the rate of
30 eight and one-half percent.

31 (6) In the case of taxable periods beginning on or after January 1, 2012, a tax is hereby
32 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
33 corporation engaging in business in this state or deriving income from property, activity or other

34 sources in this state, except corporations exempt under section five of this article, at the rate of
35 seven and three-quarters percent: *Provided*, That the reduction in tax authorized by this
36 subsection shall be suspended if the combined balance of funds as of June 30, 2011, in the
37 Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B
38 established in section twenty, article two, chapter eleven-b of this code does not equal or exceed
39 ten percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2011:
40 *Provided, however*, That the rate reduction schedule will resume in the calendar year immediately
41 following any subsequent fiscal year when the combined balance of funds as of June 30 of that
42 fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve
43 Fund - Part B next equals or exceeds ten percent of the General Revenue Fund budgeted for the
44 immediately succeeding fiscal year.

45 (7) In the case of taxable periods beginning on or after January 1, 2013, a tax is hereby
46 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
47 corporation engaging in business in this state or deriving income from property, activity or other
48 sources in this state, except corporations exempt under section five of this article, at the rate of
49 seven percent: *Provided*, That the reduction in tax authorized by this subsection shall be
50 suspended for one calendar year subsequent to the occurrence of the suspension of the reduction
51 in tax authorized by subdivision (6) of this section: *Provided, however*, That the reduction in tax
52 on the first day of any calendar year authorized by this subsection shall be suspended if the
53 combined balance of funds as of June 30 of the preceding year in the Revenue Fund Shortfall
54 Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section
55 twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the
56 General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding year.

57 (8) In the case of taxable periods beginning on or after January 1, 2014, a tax is hereby
58 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
59 corporation engaging in business in this state or deriving income from property, activity or other

60 sources in this state, except corporations exempt under section five of this article, at the rate of
 61 six and one-half percent: *Provided*, That the reduction in tax authorized by this subsection shall
 62 be suspended for one calendar year subsequent to the occurrence of the suspension of the
 63 reduction in tax authorized by subdivision (7) of this section: *Provided, however*, That the
 64 reduction in tax on the first day of any calendar year authorized by this subsection shall be
 65 suspended if the combined balance of funds as of June 30 of the preceding year in the Revenue
 66 Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established
 67 in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent
 68 of the General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding
 69 year.

70 (9) In the case of taxable periods beginning on or after January 1, 2017, a tax is hereby
 71 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
 72 corporation engaging in business in this state or deriving income from property, activity or other
 73 sources in this state, except corporations exempt under section five of this article, in accordance
 74 with the following table:

<u>If the West Virginia</u> <u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$10,000</u>	<u>3% of the taxable income</u>
<u>Over \$10,000 but not</u> <u>over \$25,000</u>	<u>\$300.00 plus 3.75% of</u> <u>excess over \$10,000</u>
<u>Over \$25,000 but not</u> <u>over \$40,000</u>	<u>\$862.50 plus 4.25% of</u> <u>excess over \$25,000</u>
<u>Over \$40,000 but not</u> <u>over \$60,000</u>	<u>\$1,500.00 plus 5.75% of</u> <u>excess over \$40,000</u>
<u>Over \$60,000, but not</u> <u>over \$150,000</u>	<u>\$2,650.00 plus 6.25% of</u> <u>excess over \$60,000</u>
<u>Over \$150,000, but not</u> <u>over \$250,000</u>	<u>\$8,275.00 plus 8% of excess</u> <u>over \$150,000</u>
Over \$250,000	\$16,275 plus 9% of excess

NOTE: The purpose of this bill is to provide for a fiscally responsible budget through fair tax adjustments. The bill increases the tax on corporations holding more than 10,000 acres of land; increases the rate of the consumers sales and service tax; and increases the rate of the use tax. The bill provides effective dates for those rate changes and changes the words "six percent" to "the current consumers sales and service tax rate or use tax rate" where those terms are used. The bill imposes the consumers sales tax on telecommunications service and ancillary services and imposes the consumer sales and service tax on the sale of certain digital goods. The bill imposes the consumer sales and service tax on personal services. It adjusts the personal income tax rates to lower rates on taxable income between \$10,000 and \$150,000 for joint filers and between \$5,000 and \$75,000 for individuals filing separate returns. The bill creates new personal income tax rates for higher earners; exempting social security benefits from the personal income tax if the taxpayer's total taxable income is below \$50,000; amending the West Virginia exemption for residents such that it is reduced for residents with more than \$100,000 in West Virginia taxable income. The bill exempts monetary benefits derived from military retirement from personal income tax obligations. The bill creates the West Virginia Earned Income Tax Credit and authorizes a refundable tax credit based upon the federal Earned Income Tax Credit. It determines eligibility for the credit the amount of the credit. It authorizes rule-making authority. The bill replaces the flat corporate net income tax rate with a tiered rate that is consistent with the personal income tax rates, thereby reducing the tax rate for businesses with lower annual income and increasing the tax rate for higher earning businesses and sets forth effective dates.

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