

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2964

**FISCAL
NOTE**

BY DELEGATE BATES

[Introduced March 13, 2017; Referred
to the Committee on Health and Human Resources then
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §5-1A-2a; to amend and reenact §11-15-3a of said code; to amend and
 3 reenact §11-17-3 of said code; to amend said code by adding thereto a new section,
 4 designated §11-21-4g; and to amend and reenact §11-24-4 of said code, all relating to
 5 implementing the “Budget Stabilization Act of 2017”; placing a limited budget freeze of four
 6 years to 2015 Governor’s budget proposal, excepting certain funding obligations;
 7 providing a temporary food tax; providing for an increase in the tobacco tax; providing for
 8 a temporary increase in the personal income tax rates; providing for a temporary increase
 9 in the corporation net income tax; and providing for a removal of certain taxes sooner upon
 10 sufficient funding to state reserve account.

Be it enacted by the Legislature of West Virginia:

1 That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a
 2 new section, designated §5-1A-2a; that §11-15-3a of said code be amended and reenacted; that
 3 §11-17-3 of said code be amended and reenacted; that said code be amended by adding thereto
 4 a new section, designated §11-21-4g; and that §11-24-4 of said code be amended and reenacted,
 5 all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 1A. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL
 SUBMITTED BY GOVERNOR TO LEGISLATURE.**

§5-1A-2a. Budget Stabilization Act of 2017.

1 (a) Effective with the enactment of this section during the 2017 Regular Session of the

2 Legislature, the Governor may not propose to the Legislature, pursuant to section two of this
3 article, a budget larger in total dollars expended than that was submitted by the Governor as
4 reflected in the introduced versions of S.B.233 and H.B. 2016 of the Regular Session of the 2015
5 Legislature, except to increase funding for Public Employees Insurance Agency to fund state
6 employee benefits, to meet state Medicaid program requirements pursuant to Title XIX of the
7 Social Security Act, or to meet state employee and teacher pension fund contributions and funding
8 obligations of the state. The purpose of the provisions of this act implementing temporary tax
9 increases pursuant to section three-a, article fifteen, chapter eleven; and section four-g, article
10 twenty-one, chapter eleven; and section four, article twenty-four, chapter eleven, all of this code,
11 is to temporary fund the state at the 2015 fiscal year budget level, by implementing a budget
12 freeze, tied to temporary tax increases to provide the preservation of essential government
13 services, while stabilizing the state budget funding stream, and using any excess moneys to fund
14 the state Revenue Shortfall Accounts. This act also establishes an increase in the state tobacco
15 tax, as provided in section three-a, article seventeen, chapter eleven of this code, which is a
16 permanent tax intended to both reduce tobacco consumption and provide enhanced revenue for
17 the state.

18 (b) To the extent that projected revenues do not allow the Governor to project spending
19 equal to the amount of the Governor's proposed 2015 fiscal year budget, the Governor shall
20 submit a budget reduced sufficiently to reflect those budget estimates. If the Governor projects
21 that the revenues of the state will exceed the proposed 2015 fiscal year budget, those excess
22 moneys shall be appropriated to the Revenue Shortfall Fund created pursuant to section twenty,
23 article two, chapter eleven-b of this code.

24 (c) The provisions of this section expire and are of no force or effect beginning July 1,
25 2021: *Provided*, That notwithstanding any code provision to the contrary, the expiration of a
26 temporary tax increase authorized in section three-a, article fifteen, chapter eleven; and section
27 four-g, article twenty-one, chapter eleven; and section four, article twenty-four, chapter eleven, all

28 of this code, shall be suspended prior to their scheduled expiration of July 1, 2021, if the combined
 29 balance of funds as of the end of any fiscal year, in the Revenue Fund Shortfall Reserve Fund
 30 and the Revenue Fund Shortfall Reserve Fund Part B established in section twenty, article two,
 31 chapter eleven b of this code equals or exceeds twenty percent of the General Revenue Fund
 32 budgeted for the upcoming fiscal year: *Provided, however,* That if the Revenue Fund Shortfall
 33 Reserve Fund and the Revenue Fund Shortfall Reserve Fund Part B next equals or exceeds
 34 seventeen and one-half percent but not twenty percent, of the General Revenue Fund budgeted
 35 for the immediately succeeding fiscal year, the temporary tax increases contained in section
 36 three-a, article fifteen, chapter eleven; and section four-g, article twenty-one, chapter eleven; and
 37 section four, article twenty-four, chapter eleven, all of this code, shall be reduced by one half for
 38 the upcoming fiscal year.

CHAPTER 11. TAXATION.

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.* -- Notwithstanding any provision of this article
 2 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, shall be three percent of its
 5 sales price, as defined in section two, article fifteen-b of this chapter.

6 (2) *Additional rate reduction.* -- The rate of tax on sales, purchases and uses of food and
 7 food ingredients as defined in that section that is intended for human consumption after December
 8 31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012,
 9 the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section
 10 that is intended for human consumption shall be one percent of its sales price, as defined in that

11 section.

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

25 (b) After June 30, 2017, the rate of tax on sales, purchases and uses of food and food
26 ingredients intended for human consumption, as defined in section two, article fifteen-b of this
27 chapter, is three percent of its sales price. The tax imposed pursuant to this subsection expires
28 July 1, 2021.

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

35 ~~(c)~~ (d) *Federal Food Stamp and Women, Infants and Children programs, other*
36 *exemptions.* -- Nothing in this section affects application of the exemption from tax provided in

37 section nine of this article for food purchased by an eligible person using food stamps, electronic
38 benefits transfer cards or vouchers issued by or pursuant to authorization of the United States
39 Department of Agriculture to individuals participating in the Federal Food Stamp Program, by
40 whatever name called, or the Women, Infants and Children (WIC) program, or application of any
41 other exemption from tax set forth in this article or article fifteen-a of this chapter.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

1 (a) *Tax on cigarettes and tobacco products other than cigarettes.* — For the purpose of
2 providing revenue for the General Revenue Fund of the state, an excise tax is hereby levied and
3 imposed on sales of cigarettes and tobacco products other than cigarettes.

4 (b) *Tax rate on cigarettes.* — Effective May 1, 2003, the excise tax rate levied and imposed
5 on the sale of cigarettes is 55 cents on each twenty cigarettes or in like ratio on any part thereof:
6 *Provided, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of*
7 *cigarettes is \$1.20 on each twenty cigarettes or in like ratio on any part thereof: Provided,*
8 *however, That on and after July 1, 2017, the excise tax rate levied and imposed on the sale of*
9 *cigarettes is \$1.55 on each twenty cigarettes or in like ratio on any part thereof.* Only one sale of
10 the same article shall be used in computing the amount of tax due under this subsection.

11 (c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise
12 tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate
13 equal to seven percent of the wholesale price of each article or item of tobacco products other
14 than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if
15 not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided, That on and*
16 *after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products*
17 *other than cigarettes is at the rate equal to twelve percent of the wholesale price of each article*
18 *or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer,*

19 whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the
 20 wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of
 21 tax due under this subsection.

22 (d) *Effective date of amendments.* — Amendments to this section enacted in the year 2003
 23 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016.
 24 Amendments to this section enacted in the year 2016 apply in determining tax imposed under this
 25 article effective on and after July 1, 2016. The amendment to this section enacted in 2017 applies
 26 in determining tax imposed under this article effective on and after July 1, 2017.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4g. Rate of tax -- Taxable years beginning on or after January 1, 2017.

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:

<u>If the West Virginia</u> <u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$10,000</u>	<u>3.5% of the taxable income</u>
<u>Over \$10,000 but not</u> <u>over \$25,000</u>	<u>\$350.00 plus 4.5% of excess</u> <u>over \$10,000</u>
<u>Over \$25,000 but not</u> <u>over \$40,000</u>	<u>\$1,025.00 plus 5% of excess</u> <u>over \$25,000</u>
<u>Over \$40,000 but not</u> <u>over \$60,000</u>	<u>\$1,775.00 plus 6.5% of excess</u> <u>over \$40,000</u>
<u>Over \$60,000 but not</u>	<u>\$3,075.00 plus 7% of excess</u>

24	<u>Over \$200,000</u>	<u>over \$60,000</u>
25		
26	<u>Over \$200,000</u>	<u>\$12,875.00 plus 7.5% excess</u>
27		<u>over \$200,000</u>

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

32	<u>If the West Virginia</u>	
33	<u>taxable income is:</u>	<u>The tax is:</u>
34		
35	<u>Not over \$5,000</u>	<u>3.5% of the taxable income</u>
36		
37	<u>Over \$5,000 but not</u>	<u>\$175.00 plus 4.5% of excess</u>
38	<u>over \$12,500</u>	<u>over \$5,000</u>
39		
40	<u>Over \$12,500 but not</u>	<u>\$512.50 plus 5% of</u>
41	<u>over \$20,000</u>	<u>excess over \$12,500</u>
42		
43	<u>Over \$20,000 but not</u>	<u>\$887.50 plus 6.5% of excess</u>
44	<u>over \$30,000</u>	<u>over \$20,000</u>
45		
46	<u>Over \$30,000 but not</u>	<u>\$1,537.50 plus 7% of</u>
47	<u>over \$100,000</u>	<u>excess over \$30,000</u>
48		
49	<u>Over \$100,000</u>	<u>\$6,437.50 plus 7.5% of</u>
50		<u>excess over \$100,000</u>

51 (c) Applicability of this section. -- The provisions of this section, as amended in 2017, shall
 52 be applicable in determining the rate of tax imposed by this article for all taxable years beginning
 53 after December 31, 2016, and shall be in lieu of the rates of tax specified in section four-e of this
 54 article: *Provided:* That effective July 1, 2021, this section expires and is no longer in force or effect,
 55 and the provisions of section four-e of this article shall again become effective.

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 July 1, 2017, a tax is imposed for
71 each taxable year on the West Virginia taxable income of every domestic or foreign corporation
72 engaging in business in this state or deriving income from property, activity or other sources in
73 this state, except corporations exempt under section five of this article, at the rate of seven and
74 one-half percent: *Provided,* That effective July 1, 2021, the provisions of this subsection expire
75 and the provisions of subsection (8) are again effective.

NOTE: The purpose of this bill is to implement several temporary tax increases to stabilize the state budget; including establishing a 3% food tax, increasing personal income tax rates; increasing tobacco taxes; and increasing the corporate net income tax rate; all to expire effective July 1, 2021.

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