

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2123

**FISCAL
NOTE**

BY DELEGATES LINVILLE AND ESPINOSA

[Introduced February 10, 2021; Referred to the
Committee on Finance]

1 A BILL to amend and reenact §11-21-4e of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §11B-2-33, all relating to
3 reducing personal income tax rates when personal income tax reduction fund is funded at
4 a certain threshold, and further reducing those rates when that threshold is reached again;
5 establishing a personal income tax reduction fund and providing for deposits into the
6 personal income tax reduction fund from sales and use taxes, derived from certain lottery
7 games that utilize an electronic computer and a video screen, racetrack table games,
8 lottery games that are derived from limited video lottery operations, derived from sports
9 wagering at a secondary location of a licensed racetrack, and derived from interactive
10 gaming at a primary or secondary location of a licensed racetrack; specifying rate
11 reductions; providing for deposits from personal income tax reduction fund into general
12 revenue fund; imposing duties on the State Tax Commissioner and other state agencies
13 officers; and providing for investment and disposition of fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax — Taxable years beginning on or after January 1, 1987; taxable years after December 31, 2021.

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 §11-21-3 of this code 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 10 11	If the West Virginia taxable income is:	The tax is:
12	Not over \$10,000	3% of the taxable income
14	Over \$10,000 but not 15 over \$25,000	\$300.00 plus 4% of excess over \$10,000
17	Over \$25,000 but not 18 over \$40,000	\$900.00 plus 4.5% of excess over \$25,000
20	Over \$40,000 but not 21 over \$60,000	\$1,575.00 plus 6% of excess over \$40,000
23	Over \$60,000	\$2,775.00 plus 6.5% of excess over \$60,000

26 (b) *Rate of tax on married individuals filing separate returns.* — In the case of husband
 27 and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-
 28 3 of this code on the West Virginia taxable income of each spouse shall be determined in
 29 accordance with the following table:

30 31 32	If the West Virginia taxable income is:	The tax is:
33	Not over \$5,000	3% of the taxable income
35	Over \$5,000 but not 36 over \$12,500	\$150.00 plus 4% of excess over \$5,000
38	Over \$12,500 but not 39 over \$20,000	\$450.00 plus 4.5% of excess over \$12,500
41	Over \$20,000 but not 42 over \$30,000	\$787.50 plus 6% of excess over \$20,000
44	Over \$30,000	\$1,387.50 plus 6.5% of excess over \$30,000

47 (c) *Applicability of this section.* — The provisions of this section, as amended by this act,
 48 shall be applicable in determining the rate of tax imposed by this article for all taxable years
 49 beginning after December 31, 1986, and shall be in lieu of the rates of tax specified in §11-21-4d

50 of this code. The provisions of this section and of §11B-2-33 of this code shall be applicable in
51 determining the rate of tax imposed by this article for all taxable years beginning after December
52 31, 2021, and shall be in lieu of the rates of tax specified in this section upon the occurrence of
53 the events specified in §11B-2-33 of this code.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-33. Personal income tax reduction fund.

1 (a) The personal income tax reduction fund is hereby established. The personal income
2 tax reduction fund shall be funded continuously and on a revolving basis in accordance with this
3 section, with all interest or other earnings on the moneys therein credited to the fund. The personal
4 income tax reduction fund shall be funded as provided by this section, by other provisions of this
5 code, and by any appropriation made to the fund by the Legislature. Moneys in the personal
6 income tax reduction fund may be expended solely for the purposes set forth in this section.

7 (b) Notwithstanding any other provision of this code to the contrary, moneys to be
8 deposited in the personal income tax reduction fund include:

9 (1) Not more than \$3 million annually of the net amount of all West Virginia state sales
10 and use tax collections on all sales made on and after January 1, 2022, in which the internet was
11 used to order, ship, or buy a product, on-line, but only where the sale was made by an out of state
12 vendor that registered with the State Tax Division for the first time on or after January 1, 2022, to
13 collect and remit state sales and use taxes to the state. The State Tax Commissioner shall deposit
14 the amounts as required by this section into the fund;

15 (2) The net amount of the state's share of the gross sales received by the State Lottery
16 Commission that are derived from lottery games authorized under §29-22-1 et seq. of this code
17 on and after January 1, 2021, that utilize an electronic computer and a video screen to operate a
18 lottery game and communicate the results thereof, such as the games of "Travel" or "Keno", and

19 which do not utilize an interactive electronic terminal device allowing input by an individual player,
20 that are made available by the State Lottery Commission in locations other than: (A) Private clubs
21 licensed in accordance with the provisions of §60-7-1 *et seq.* of this code; (B) retail licensees
22 licensed in accordance with the provisions of §60-3A-1 *et seq.* of this code; or (C) in the facilities
23 of class A licensees which are licensed in accordance with the provisions of §11-16-9 of this code,
24 in which facility at least 75 percent of the nonintoxicating beer sold by the class A licensee in the
25 preceding year was sold for consumption on the premises. The State Lottery Commission shall
26 deposit the amounts as required by this section into the fund;

27 (3) The net amount of the state's share of gross terminal income received by the State
28 Lottery Commission that are derived from lottery games that are derived from limited video lottery
29 operations authorized under §29-22B-1 *et seq.* of this code on and after January 1, 2020, that are
30 operated at a retail location by a licensed operator authorized by the State Lottery Commission
31 to operate limited video lottery terminals as a limited video lottery retailer. The State Lottery
32 Commission shall deposit the amounts as required by this section into the fund;

33 (4) The net amount of the state's share of gross revenues received by the State Lottery
34 Commission that are derived from racetrack video lottery terminals at a secondary location of a
35 licensed racetrack authorized under §29-22A-1 *et seq.* of this code on and after January 1, 2021.
36 The State Lottery Commission shall deposit the amounts as required by this section into the fund;

37 (5) The net amount of the state's share of gross revenues received by the State Lottery
38 Commission that are derived from racetrack table games at a secondary location of a licensed
39 racetrack authorized under §29-22C-1 *et seq.* of this code on and after January 1, 2021. The
40 State Lottery Commission shall deposit the amounts as required by this section into the fund;

41 (6) The net amount of the state's share of gross revenues received by the State Lottery
42 Commission that are derived from sports wagering at a secondary location of a licensed racetrack
43 authorized under §29-22D-1 *et seq.* of this code on and after January 1, 2021. The State Lottery
44 Commission shall deposit the amounts as required by this section into the fund;

45 (7) The net amount of the state's share of gross revenues received by the State Lottery
46 Commission that are derived from interactive gaming at a primary or secondary location of a
47 licensed racetrack authorized under §29-22E-1 et seq. of this code on and after January 1, 2021.

48 The State Lottery Commission shall deposit the amounts as required by this section into the fund;

49 (8) After depositing the amounts into the Revenue Shortfall Reserve Fund as required
50 under §11B-2-20 of this code, 25 percent of all surplus revenues described in that section; and

51 (9) All other amounts directed to be deposited into the fund by any provision of this code
52 or appropriation.

53 (c)(1) If at the end of any fiscal year the personal income tax reduction fund is funded at
54 an amount equal to or exceeding 2.5 times the total net reduction in personal income tax revenue
55 collections that would have been received in that fiscal year if the income tax rates for that fiscal
56 year had been reduced by 0.25 percent, the Secretary of Revenue shall certify the same to the
57 State Tax Commissioner on or before the next ensuing July 31.

58 (2) Upon the certification, for all taxable years beginning on or after the next ensuing
59 January 1, the tax imposed by §11-21-3 of this code shall, in lieu of the provisions of §11-21-4e
60 of this code, be imposed in accordance with the following as if fully set forth therein: The Tax
61 Commissioner shall publish by administrative notice the provisions set forth in §11-21-4e of this
62 code after reducing each percentage by 0.25 percent, which published provisions shall for all
63 taxable years beginning on or after the next ensuing January 1, be the tax imposed by §11-21-3
64 of this code in lieu of the provisions of §11-21-4e of this code.

65 (3) Upon the certification, on the next ensuing July 1, the Secretary of Revenue shall
66 transfer the sum of the multiplication described in subdivision (1) of this subsection from the
67 personal income tax reduction fund to the General Revenue Fund of the state.

68 (d)(1) After the occurrence of the events described in subdivision (1), subsection (c) of this
69 section, if at the end of any fiscal year the personal income tax reduction fund is funded at an
70 amount equal to or exceeding two and one-half times the total net reduction in personal income

71 tax revenue collections that would have been received in that fiscal year if the income tax rates
72 for that fiscal year had been reduced by 0.25 percent, less the amount required to be transferred
73 by subdivision (3), subsection (c) of this section, if required, the Secretary of Revenue shall certify
74 the same to the State Tax Commissioner on or before the next ensuing July 31.

75 (2) Upon the certification, for all taxable years beginning on or after the next ensuing
76 January 1, the tax imposed by §11-21-3 of this code shall, in lieu of the provisions of §11-21-4e
77 of this code, be imposed in accordance with the following as if fully set forth therein: The Tax
78 Commissioner shall publish by administrative notice the provisions set forth in §11-21-4e of this
79 code after reducing each percentage by an additional 0.25 percent to the same effect of reducing
80 those percentages as provided by subdivision (2), subsection (c) of this section, which published
81 provisions shall for all taxable years beginning on or after the next ensuing January 1, be the tax
82 imposed by §11-21-3 of this code in lieu of the provisions of §11-21-4e of this code.

83 (3) Upon the certification, on the next ensuing July 1, the Secretary of Revenue shall
84 transfer the sum of the multiplication described in subdivision (1) of this subsection from the
85 personal income tax reduction fund to the General Revenue Fund of the state.

86 (e) The moneys in the personal income tax reduction fund shall be made available to the
87 West Virginia Board of Treasury Investments for management and investment of the moneys in
88 accordance with the provisions of §12-6C-1 et seq. of this code and to the West Virginia
89 Investment Management Board for management and investment of the moneys in accordance
90 with the provisions of §12-6-1 et seq. of this code in such amounts as may be directed in the
91 discretion of the Secretary of Revenue. Any balance of the personal income tax reduction fund,
92 including accrued interest and other return earned thereon at the end of any fiscal year, shall not
93 revert to the General Fund but shall remain in the personal income tax reduction fund for the
94 purposes set forth in this section.

NOTE: The purpose of this bill is to reduce personal income tax rates when personal

income tax reduction fund is funded at a certain threshold from funds derived from sales and use taxes, certain lottery games that utilize an electronic computer and a video screen, racetrack table games, lottery games that are derived from limited video lottery operations, derived from sports wagering at a secondary location of a licensed racetrack, and derived from interactive gaming at a primary or secondary location of a licensed racetrack, and further reducing those rates when that threshold is reached again. The bill establishes a personal income tax reduction fund and provides for deposits into the personal income tax reduction fund. The bill specifies rate reductions and provides for deposits from the personal income tax reduction fund into the general revenue fund. The bill imposes duties on the State Tax Commissioner and other state agencies officers; and provides for investment and disposition of fund.

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