WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 3216

By Delegate Thompson

[Introduced March 16, 2021; Referred to the Committee on Workforce Development then the Judiciary then Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-24-22, relating to establishment of an excess executive compensation tax; defining terms; levying tax on corporations based upon employee salary ratios; setting rate of the tax; and specifying when the tax is to be paid.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-22. Excess executive compensation tax.

(a) For purposes of this section, the following definitions apply:

“Compensation” means wages, salaries, commissions, bonuses, property issued or transferred, including, but not limited to, stock options, in exchange for the performance of services, compensation for services to owners of pass-through entities, and any other form of remuneration paid to employees for services;

“Executive pay ratio” means the ratio of the annual compensation paid to the corporation’s highest-paid managerial employee for a tax year to the median compensation paid to the corporation’s full-time and part-time employees based in the state for that tax year determined on a full-time equivalency and annualized basis. For purposes of this definition:

(1) An employee is based in the state for a tax year if the employee’s total working hours in the state for the corporation during the tax year exceeds the employee’s total working hours in any other jurisdiction for the corporation during the tax year;

(2) Compensation paid to a part-time employee for the tax year shall be converted to a “full-time equivalency” by multiplying a part-time employee’s compensation for the tax year by 40 and dividing the result by the average number of hours the part-time employee worked per week during the tax year for the corporation; and

(3) Compensation paid to an employee who was employed by the corporation for only a portion of the tax year shall be annualized by multiplying the employee’s compensation (or, as stated, for a part-time employee, full-time equivalent compensation) for the tax year by 52, and dividing the result by the number of weeks that the employee was employed by that corporation during the tax year;

“Highest-paid managerial employee” means the individual employee or officer of a corporation with managerial responsibility in a business function who received the most compensation for a tax year; and

“West Virginia taxable income” means a corporation’s West Virginia taxable income after making the adjustments authorized by this article and after applying the allocation and apportionments provided in §11-24-7, §11-24-7a, and §11-24-7b of this code.

(b) Commencing with tax years beginning on or after January 1, 2022, there shall be an annual excess executive compensation tax on each domestic or foreign corporation engaging in business within the state where the executive pay ratio for the tax year of that corporation exceeds 100:1.

(c) The excess executive compensation tax shall be calculated as follows:

(1) 0.15 percent of the corporation’s West Virginia taxable income for a tax year if the corporation has an executive pay ratio for that tax year of greater than 100:1, but less than or equal to 250:1;

(2) 0.3 percent of the corporation’s West Virginia taxable income for a tax year if the corporation has an executive pay ratio for that tax year of greater than 250:1, but less than or equal to 500:1; and

(3) 0.5 percent of the corporation’s West Virginia taxable income for a tax year if the corporation has an executive pay ratio for that tax year of greater than 500:1.

(d) The excess executive compensation tax is imposed as a separate tax upon any corporation meeting the criteria set forth in this section and shall be paid in addition to the corporation net income tax imposed in this article. Payment of the tax owed for a taxable year shall be made together with the corporation net income tax when returns for that tax are filed.

NOTE: The purpose of this bill is to establish an Excess Executive Compensation Tax upon corporations when the rate compensation for a corporation’s highest paid employee exceeds the average employee compensation by a defined ratio.

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