

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3216

**FISCAL
NOTE**

BY DELEGATE THOMPSON

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

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §11-24-22, relating to establishment of an excess executive compensation tax;
 3 defining terms; levying tax on corporations based upon employee salary ratios; setting
 4 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.

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

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

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

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

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

17 (3) Compensation paid to an employee who was employed by the corporation for only a
 18 portion of the tax year shall be annualized by multiplying the employee’s compensation (or, as
 19 stated, for a part-time employee, full-time equivalent compensation) for the tax year by 52, and

20 dividing the result by the number of weeks that the employee was employed by that corporation
21 during the tax year;

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

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

28 (b) Commencing with tax years beginning on or after January 1, 2022, there shall be an
29 annual excess executive compensation tax on each domestic or foreign corporation engaging in
30 business within the state where the executive pay ratio for the tax year of that corporation exceeds
31 100:1.

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

33 (1) 0.15 percent of the corporation’s West Virginia taxable income for a tax year if the
34 corporation has an executive pay ratio for that tax year of greater than 100:1, but less than or
35 equal to 250:1;

36 (2) 0.3 percent of the corporation’s West Virginia taxable income for a tax year if the
37 corporation has an executive pay ratio for that tax year of greater than 250:1, but less than or
38 equal to 500:1; and

39 (3) 0.5 percent of the corporation’s West Virginia taxable income for a tax year if the
40 corporation has an executive pay ratio for that tax year of greater than 500:1.

41 (d) The excess executive compensation tax is imposed as a separate tax upon any
42 corporation meeting the criteria set forth in this section and shall be paid in addition to the
43 corporation net income tax imposed in this article. Payment of the tax owed for a taxable year
44 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.