

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 571

FISCAL  
NOTE

BY SENATORS BALDWIN, LINDSAY, AND WOELFEL

[Introduced March 5, 2021; referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-21-22 and §11-21-22b of the Code of West Virginia, 1931, as  
 2 amended, relating to providing an earned income tax credit against the personal income  
 3 tax.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-22. Low-income family tax credit.**

1 In order to eliminate West Virginia personal income tax on families with low incomes ~~below~~  
 2 ~~the federal poverty guidelines~~ and to reduce the West Virginia personal income tax on working  
 3 families with moderate incomes, ~~that are immediately above the federal poverty guidelines~~ there  
 4 is hereby created a ~~nonrefundable~~ refundable tax credit, to be known as the ~~low-income family~~  
 5 ~~tax credit~~ West Virginia Earned Income Tax Credit, against the West Virginia personal income  
 6 tax. ~~The low-income family tax credit is based upon family size and the federal poverty guidelines.~~  
 7 ~~The low-income tax credit reduces the tax imposed by the provisions of this article on families~~  
 8 ~~with modified federal adjusted gross income below or near the federal poverty guidelines:~~  
 9 ~~Provided, That for tax years beginning on and after January 1, 2009, any person who is required~~  
 10 ~~to pay the federal alternative minimum income tax in the current tax year is disqualified from~~  
 11 ~~receiving any tax credit provided under this section~~ The West Virginia Earned Income Tax Credit  
 12 is based upon the federal earned income tax credit.

### **§11-21-22b. Amount of credit.**

1 ~~(a) For each taxable year beginning on or after the first day of January, two thousand~~  
 2 ~~seven, the tax credit authorized by section twenty-two [§ 11-21-22] of this article may be used by~~  
 3 ~~every qualified taxpayer and shall be calculated in accordance with subsections (b) and (c) of this~~  
 4 ~~section: Provided, That for the taxable year beginning on the first day of January, two thousand~~  
 5 ~~seven, the qualified taxpayer shall be allowed to claim only fifty percent of the amount of the tax~~  
 6 ~~credit.~~

7 ~~(b) Qualified taxpayers who file as an individual, as a head of household, as a husband~~

8 and wife who file a joint return, or as an individual entitled to file as a surviving spouse shall be  
9 entitled to a tax credit based on the following:

10 (1) If modified federal adjusted gross income is at or below the federal poverty guidelines  
11 based on family size, the credit shall be an amount equal to the amount of tax owed under this  
12 article by the qualified taxpayer;

13 (2) If modified federal adjusted gross income is greater than the federal poverty guidelines  
14 but does not exceed three hundred dollars above the federal poverty guidelines based on family  
15 size, the amount of credit allowable shall be ninety percent of the amount of tax owed under this  
16 article by the qualified taxpayer;

17 (3) If modified federal adjusted gross income is greater than three hundred dollars above  
18 the federal poverty guidelines but does not exceed six hundred dollars above the federal poverty  
19 guidelines based on family size, the amount of credit allowable shall be eighty percent of the  
20 amount of tax owed under this article by the qualified taxpayer;

21 (4) If modified federal adjusted gross income is greater than six hundred dollars above the  
22 federal poverty guidelines but does not exceed nine hundred dollars above the federal poverty  
23 guidelines based on family size, the amount of credit allowable shall be seventy percent of the  
24 amount of tax owed under this article by the qualified taxpayer;

25 (5) If modified federal adjusted gross income is greater than nine hundred dollars above  
26 the federal poverty guidelines but does not exceed one thousand two hundred dollars above the  
27 federal poverty guidelines based on family size, the amount of credit allowable shall be sixty  
28 percent of the amount of tax owed under this article by the qualified taxpayer;

29 (6) If modified federal adjusted gross income is greater than one thousand two hundred  
30 dollars above the federal poverty guidelines but does not exceed one thousand five hundred  
31 dollars above the federal poverty guidelines based on family size, the amount of credit allowable  
32 shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;

33 (7) If modified federal adjusted gross income is greater than one thousand five hundred

~~34 dollars above the federal poverty guidelines but does not exceed one thousand eight hundred  
35 dollars above the federal poverty guidelines based on family size, the amount of credit allowable  
36 shall be forty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~37 (8) If modified federal adjusted gross income is greater than one thousand eight hundred  
38 dollars above the federal poverty guidelines but does not exceed two thousand one hundred  
39 dollars above the federal poverty guidelines based on family size, the amount of credit allowable  
40 shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;~~

~~41 (9) If modified federal adjusted gross income is greater than two thousand one hundred  
42 dollars above the federal poverty guidelines but does not exceed two thousand four hundred  
43 dollars above the federal poverty guidelines based on family size, the amount of credit allowable  
44 shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer; or~~

~~45 (10) If modified federal adjusted gross income is greater than two thousand four hundred  
46 dollars above the federal poverty guidelines but does not exceed two thousand seven hundred  
47 dollars above the federal poverty guidelines based on family size, the amount of credit allowable  
48 shall be ten percent of the amount of tax owed under this article by the qualified taxpayer.~~

~~49 (c) Qualified taxpayers who are husband and wife and who file separate returns shall be  
50 entitled to a tax credit based on the following:~~

~~51 (1) If modified federal adjusted gross income is at or below fifty percent of the federal  
52 poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax  
53 owed under this article by the qualified taxpayer;~~

~~54 (2) If modified federal adjusted gross income is greater than fifty percent of the federal  
55 poverty guidelines but does not exceed one hundred fifty dollars above fifty percent of the federal  
56 poverty guidelines based on family size, the amount of credit allowable shall be ninety percent of  
57 the amount of tax owed under this article by the qualified taxpayer;~~

~~58 (3) If modified federal adjusted gross income is greater than one hundred fifty dollars  
59 above fifty percent of the federal poverty guidelines but does not exceed three hundred dollars~~

60 ~~above fifty percent of the federal poverty guidelines based on family size, the amount of credit~~  
61 ~~allowable shall be eighty percent of the amount of tax owed under this article by the qualified~~  
62 ~~taxpayer;~~

63 ~~(4) If modified federal adjusted gross income is greater than three hundred dollars above~~  
64 ~~fifty percent of the federal poverty guidelines but does not exceed four hundred fifty dollars above~~  
65 ~~fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable~~  
66 ~~shall be seventy percent of the amount of tax owed under this article by the qualified taxpayer;~~

67 ~~(5) If modified federal adjusted gross income is greater than four hundred fifty dollars~~  
68 ~~above fifty percent of the federal poverty guidelines but does not exceed six hundred dollars above~~  
69 ~~fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable~~  
70 ~~shall be sixty percent of the amount of tax owed under this article by the qualified taxpayer;~~

71 ~~(6) If modified federal adjusted gross income is greater than six hundred dollars above fifty~~  
72 ~~percent of the federal poverty guidelines but does not exceed seven hundred fifty dollars above~~  
73 ~~fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable~~  
74 ~~shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;~~

75 ~~(7) If modified federal adjusted gross income is greater than seven hundred fifty dollars~~  
76 ~~above fifty percent of the federal poverty guidelines but does not exceed nine hundred dollars~~  
77 ~~above fifty percent of the federal poverty guidelines based on family size, the amount of credit~~  
78 ~~allowable shall be forty percent of the amount of tax owed under this article by the qualified~~  
79 ~~taxpayer;~~

80 ~~(8) If modified federal adjusted gross income is greater than nine hundred dollars above~~  
81 ~~fifty percent of the federal poverty guidelines but does not exceed one thousand fifty dollars above~~  
82 ~~fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable~~  
83 ~~shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;~~

84 ~~(9) If modified federal adjusted gross income is greater than one thousand fifty dollars~~  
85 ~~above fifty percent of the federal poverty guidelines but does not exceed one thousand two~~

86 ~~hundred dollars above fifty percent of the federal poverty guidelines based on family size, the~~  
87 ~~amount of credit allowable shall be twenty percent of the amount of tax owed under this article by~~  
88 ~~the qualified taxpayer; or~~

89 ~~(10) If modified federal adjusted gross income is greater than one thousand two hundred~~  
90 ~~dollars above fifty percent of the federal poverty guidelines but does not exceed one thousand~~  
91 ~~three hundred fifty dollars above fifty percent of the federal poverty guidelines based on family~~  
92 ~~size, the amount of credit shall be ten percent of the amount of tax owed under this article by the~~  
93 ~~qualified taxpayer.~~

94 ~~(d) The Tax Commissioner shall develop and publish on an annual basis two indexed tax~~  
95 ~~credit tables. One tax table shall be for qualified taxpayers who file as an individual, as a head of~~  
96 ~~household, as a husband and wife who file a joint return, or as an individual entitled to file as a~~  
97 ~~surviving spouse and one tax table shall be for qualified taxpayers who are husband and wife and~~  
98 ~~who file separate returns. The indexed tax credit tables shall be based on subsections (b) and (c)~~  
99 ~~of this section~~

100 (a) For each taxable year beginning after December 31, 2021, a West Virginia resident  
101 who is eligible for the federal earned income tax credit under Section 32 of the Internal Revenue  
102 Code is eligible for a credit under this article equal to 25 percent of the amount of the federal  
103 earned income tax credit that the individual:

104 (A) Is eligible to receive in the taxable year; and

105 (B) Claimed for the taxable year under Section 32 of the Internal Revenue Code.

106 (b) If the West Virginia resident is not eligible for the federal earned income tax credit  
107 under Section 32 of the Internal Revenue Code solely because the resident does not have a  
108 qualifying child the resident is eligible for a credit under this section equal to 25 percent of the  
109 amount of the federal earned income tax credit that the individual would have been eligible for if  
110 he or she had one qualifying child.

111 (c) If other credits allowed are used by the taxpayer for the taxable year, the West Virginia

112 Earned Income Tax Credit shall be applied last.

113 (d) If the amount of the credit allowed exceeds the taxpayer's West Virginia personal  
114 income tax liability, the commissioner shall treat the excess as an overpayment and shall pay the  
115 taxpayer the amount of the excess, without interest.

116 (e) The commissioner shall make an effort every year to inform taxpayers who may be  
117 eligible to receive the credit provided under this section.

NOTE: The purpose of this bill is to create the West Virginia Earned Income Tax Credit. The bill authorizes a refundable tax credit based upon the federal earned income tax credit. The bill determines eligibility for the credit. The bill determines the amount of the credit.

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