Tax Bills Passed During 2023 West Virginia Legislative Session

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The most discussed issue during West Virginia 2023 Legislative Session was Governor Jim Justice's proposed 50% reduction of the personal income tax rates in West Virginia. The Governor's version of House Bill 2526 would have reduced rates 30% beginning with tax year 2023, with 10% reductions in 2024 and 2025. Ultimately, the Governor and the Legislature settled on a compromised version of HB 2526, discussed below, which also incorporated an income tax credit for personal property tax paid on vehicles, which the Governor had proposed via House Bill 2894. Various other credits against personal and corporate net income taxes are also included in the bill.

In addition to HB 2526, the Legislature passed other tax bills, all discussed below. Bills have not been signed by the Governor, unless otherwise stated, and it is possible that the Governor could opt to veto some of the following bills.

Note that the West Virginia Department of Revenue and its long-time Deputy Secretary, Mark Muchow, provide excellent, detailed fiscal notes for almost all tax bills, and that some of the following descriptions lean heavily on the fiscal note descriptions.

Income Taxation and Credits

HB 2526: Relating to Reducing the Personal Income Tax

Effective January 1, 2023, the graduated personal income tax rates for individuals, including heads of household, spouses filing joint returns, surviving spouses, and spouses filing separate returns, plus estates and trusts, will be reduced by approximately 21.25%. For example, the top effective rate of 6.5% will be reduced to 5.12%. The 21.25% rate reduction will also apply to nonresident composite returns and withholding obligations.

The bill also provides for further personal income tax rate reductions based upon a "trigger" formula in effect beginning in

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2025 and carrying forward into future tax years. Beginning in August of 2024, the trigger requires the Secretary of Revenue to compare total fiscal year general revenue fund collections (less severance tax collections) for the immediately preceding against inflation adjusted base year revenues. The base fiscal year is 2019, in which general revenue fund collections totaled $4,293,884,754. If there is an excess in collections over what was collected in fiscal year 2019, the rate reduction will be based on formula using the excess collections and the prior year personal income tax collections, with rate reductions capped at 10% annually.

While the bill originated as a personal income tax reduction bill, with the primary fiscal ramifications attached to the personal income tax rate reductions, the majority of the bill's provisions addresses credits against personal income tax and corporate net income tax for amounts paid to counties for property taxes.

The credit resulting in the biggest fiscal impact is the "motor vehicle property tax adjustment credit." Eligible taxpayers will receive a refundable credit against personal and corporate net income taxes for personal property taxes timely paid on motor vehicles. The amount of the credit is 100% of the personal property tax timely paid. The credit is not available for motor vehicle dealers.

A refundable real property tax credit will be available for disabled veterans for taxes timely paid on the veteran's homestead. The amount of the credit is 100% of the real property tax timely paid.

A refundable "small business property tax adjustment credit" is available to small businesses, defined as a business with personal property located in West Virginia with an aggregate appraised value of $1 million or less. A small business does not include any person holding a working interest in oil, natural gas, or natural gas liquid producing property, and does not include public utilities. The amount of the credit is 50% of the amount of property tax due and owing and timely paid by an eligible small business on personal property

The bill was signed by the Governor on March 7.

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HB 2776: Updating Meaning of "Federal Taxable Income" Under Personal Income Tax Act

This bill fully conforms to any changes made to the Internal Revenue Code during 2022 for purposes of West Virginia's definition of "federal taxable income," which is the starting point for purposes of West Virginia personal income tax.

This bill was signed by the Governor on February 14.

HB 2777: Updating Meaning of "Federal Taxable Income" Under Corporate Net Income Tax

This bill fully conforms to any changes made to the Internal Revenue Code during 2022 for purposes of West Virginia's definition of "federal taxable income," which is the starting point for purposes of West Virginia corporate net income tax.

This bill was signed by the Governor on February 14.

HB 3286: Allows a modification to decrease federal taxable income for corporate income tax purposes for net liability under apportionment

Under this bill, if the changes enacted in 2021 to Corporation Net Income tax apportionment and allocation formula, which are effective for tax years beginning on or after January 1, 2022, result in an aggregate increase to the taxpayer's net deferred tax liability or an aggregate decrease to the taxpayer's net deferred tax assets, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the taxpayer is entitled to a decreasing modification on its corporate net income tax return. The modification is only available to publicly traded companies, including affiliate corporations participating in the filing of the publicly traded company's financial statements. The modification would become available in 2028 and could be claimed over a 10-year period.

HB 2002: Increase of the Adoption Tax Credit

This bill increases the adoption tax credit from $4,000 to $5,000, and includes other non-tax related provisions.

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HB 2821: Taxation of Gaming and Gambling Winnings

Provides for a modification reducing federal adjusted gross income for personal income taxes related to gaming and gambling losses. The decreasing modification against West Virginia adjusted gross income is the amount of West Virginia gaming and gambling losses allowable as an itemized deduction for federal income tax purposes, not to exceed the amount of West Virginia gaming and gambling losses. The modification does not include the costs and expenses incurred in connection with gaming or gambling activity, and allows taxpayers to amend returns filed for 2020, 2021, and 2022 to account for the decreasing modification.

Gaming and gambling losses not subject to the modification include losses that have been applied as a deduction in determining the taxpayer's federal adjusted gross income and losses resulting from unlawful gambling activity.

SB 478: Updating the West Virginia Jumpstart Savings Program

This recently established program allows residents to save and invest money to help cover the costs of pursuing a trade or occupation. A decreasing modification against personal income taxes equal to a contribution to a Jumpstart Savings Account, up to $25,000 per year, could be taken in a single taxable year, and the excess can be taken over the ensuing five tax years. Employers may claim a nonrefundable tax credit against personal or corporate income tax for a matching contribution to a Jumpstart Savings Account of up to $5,000 per employee.

The modifications state that the entire amount of an account distribution used for certain qualified expenses is subject to reducing personal income tax modification; state that the amount of an account distribution is only subject to reducing personal income tax modification to the extent that the amount is not allowable as certain federal deductions; establish an increasing personal income tax modification for account distributions used for nonqualified expenses and previously applied toward the reducing personal income tax modification for account contributions; provide that an employer may not claim a tax credit for matching

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contributions to an account if the employer is the account owner or account beneficiary; provide that an employer may not claim both the reducing personal income tax modification and the matching credit for an amount contributed to an employee's account; and permit employers to claim matching credit for certain amounts allowable as federal tax deductions.

SB 487: Extending the Personal Income Tax Modification for Certain Pension Guarantee Benefits

This bill extends a decreasing modification for personal income tax purposes that is available to retirees receiving pension from the defined pension plans that terminated and that are being paid a reduced maximum benefit guarantee from the federal Pension Benefit Guaranty Corporation. The modification, which was originally enacted to address retirees of Weirton Steel, was set to expire beginning with tax year 2023, but is now set to expire beginning with tax year 2028, unless extended in the future.

SB 151: Levying Tax on Pass-Through Entities (SALT Cap Workaround)

This bill allows pass-through entities, including partnerships, S Corporations, and LLCs, to elect to be taxed at the entity level and provides a refundable tax credit to owners or members of an electing pass-through entity on their individual tax returns. The refundable tax credit is based on the pass-through entity owner's proportionate share of the tax levied and remitted by the owner's electing pass-through entity for the taxable year. The entity level tax allows business owners to avoid the $10,000 federal cap on state and local tax deductions.

Also provides a tax credit for income tax paid to another state, and sets an effective date for taxable years beginning on or after January 1, 2022.

Sales & Use Tax

HB 3013: Authorizing the Jefferson County Commission to Levy a Special District Excise Tax

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This bill authorizes the creation of an economic opportunity development district in Jefferson County, with the Jefferson County Commission authorized to levy a special district excise tax in the district. The tax will benefit the Hill Top House Hotel Economic Opportunity Development District

While not technically a "sales tax," the special district excise tax is imposed in lieu of sales tax in the economic opportunity development district, with the same base as the sales tax and at the 6% state sales tax rate.

Property Tax

HB 3391: Establishing Filing Deadlines for Appeals of Property Tax Valuations and Issues Involving Property Tax Classification and Taxability to the West Virginia Office of Tax Appeals

Beginning with property tax year 2023, the Office of Tax Appeals was granted jurisdiction over property tax matters, with appeals either filed directly with the Office of Tax Appeals or following a hearing with a county commission sitting as a board of equalization and review. The bill that granted the Office of Tax Appeals this authority, HB 2581 from the 2021 regular legislative session, did not address filing deadlines for property tax appeals filed with the Office of Tax Appeals.

HB 3391 establishes that property tax appeal petitions for valuation issues – whether appealed following a board of equalization and review hearing or appealed directly to the Office of Tax Appeals – must be filed with the Office of Tax Appeals on or before March 31 of the property tax year. For appeals of classification of taxability issues, the petition for appeal must be filed with the Office of Tax Appeals within 30 days of receiving writing notice of the Tax Commissioner's ruling.

The bill also establishes that all property tax appeals shall be heard *de novo* by the Office of Tax Appeals, and that hearings may be set within 90 days of the due date of the answer to the petition unless continued by the Office of Tax Appeals for good cause.

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The bill cleans up W. Va. Code § 11-10A-19 to specify that appeals of Office of Tax Appeals decisions must be filed with the newly created Intermediate Court of Appeals, not circuit courts, and that the appeal must be filed within 30 days of the Office of Tax Appeals' decision, not the 60 days previously applicable for appeals to circuit courts.

SB 149: Exempting Certain Organizations from Property Tax

Exempts from property taxation property used exclusively for divine worship and the operation of a pre-K school, primary school, middle school, secondary school, daycare center, or church camp for children, if the facility is operated by the church that owns the property or is operated by another not-for-profit organization or entity.

Healthcare Provider Tax

HB 2759: Updating the Health Care Provider Tax

Beginning July 1, 2023, the tax rate on certain eligible acute care hospitals shall be increased as needed to provide non-federal share funding for practitioner payments to the maximum amount allowed by the Centers for Medicare and Medicaid Services.

Severance Tax

HB 3012: Encourage Economic Development Regarding Rare Earth Elements

Effective July 1, 2023, provides a nine-year exemption from severance tax for the severance of "rare earth elements" and "critical minerals," with a list of each included in the amended version of W. Va. Code § 11-13A-3c.

Miscellaneous

HB 3340: Revise the West Virginia Tax Increment Financing Act

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Authorizes county commissions or municipalities to extend the termination date of certain tax increment financing districts based on the impact of COVID-19 on districts that had issued bonds prior to December 31, 2020. Also, clarifies the notice period for providing a copy of the notice of a public hearing to levying bodies prior to conducting a public hearing, and specifies that no consent or approval from local levying bodies shall be required to amend the order or ordinance, aside from the county commission or governing body of the municipality that is amending the order or ordinance.

This bill became law without the Governor's signature on March 10.

HB 2587: Require County Sheriffs to Include a Breakdown of the Distribution of Property Taxes

This bill amends W. Va. Code § 11A-1-12 to specify that the property tax receipt provided by county sheriffs to taxpayers shall include information showing the distribution amount of the tax paid for state, school current, county current, municipal current, district current and any other purposes for which taxes are levied.

SB 444: Transferring Moneys in the West Virginia Future Fund to the General Revenue Fund

This bill eliminates the West Virginia Future Fund, which was created in 2014 for the purpose of investing certain severance tax proceeds for the purpose of conserving a portion of the state's revenue resulting from increased mineral production in the state. The bill transfers any money in the fund to the general revenue fund on July 1, 2023.

SB 446: Removing Methanol and Methanol Fuel from the Definition of Special Fuel Under the Motor Fuel Excise Tax

The bill carves out "methanol" and "methanol fuel" from the definition of "special fuels." "Special fuels," along with gasoline, blended fuel, and aviation fuel, are subject to West Virginia's motor fuels excise tax.

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