



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/25/2023 12:03:21 PM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Tax TITLE-SERIES: 110-21H
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 110-21H Income Tax Credits For Property Taxes Paid

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §§29A-2-6(c) and 11-13MM-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This rule is authorized by W. Va. Code §11-13MM-6, which provides: The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13MM-1 et seq. of this code and to implement the intent of the Legislature. All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/8/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2023

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Published on WV Tax website

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This new rule is authorized by legislation passed in the 2023 regular session, and sets forth procedures and requirements that must be followed to qualify for tax credits provided for in that legislation at W. Va. Code §11-13MM-6.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This new rule is legislatively authorized pursuant to W. Va. Code §11-13MM-6, and is intended to provide needed guidance for applying and claiming certain credits.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The original estimate associated with enacted legislation of the combined impact of the property tax credits on General Revenue Fund collections was an annual reduction in collections of up to \$201.3 million beginning in FY2025.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

none

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Economic impact of the rule on the state is that the state will take in less income tax and the economic impact on the residents will be that they will pay less income tax.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	- 201,300,000.0 0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This legislative rule provides guidance for taxpayers relating to income tax credits for property taxes paid included in the "West Virginia Property Tax Adjustment Act", which passed during the 2023 legislative session. The legislation created a refundable motor vehicle property tax credit, a refundable personal income tax credit based on real property taxes paid by an eligible disabled veteran, and a refundable tax credit based on certain property taxes paid by small businesses. Effective for tax years beginning on and after January 1, 2024: an eligible taxpayer who owns motor vehicles may receive a refundable income tax credit for the amount of West Virginia ad valorem property tax timely paid on the value of a motor vehicle owned by the taxpayer during the personal income taxable year or corporation net income taxable year, as applicable; an eligible Disabled Veteran may receive a refundable personal income tax credit in the amount of West Virginia ad valorem property tax timely paid on his or her homestead during the personal income tax year; and an eligible small business taxpayer may receive a tax credit of 50 percent of the amount of West Virginia ad valorem property tax due and timely paid during the personal income taxable year or corporation net taxable year, as applicable. The original estimate associated with enacted legislation of the combined impact of the property tax

credits on General Revenue Fund collections was an annual reduction in collections of up to \$201.3 million beginning in FY2025.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 110
LEGISLATIVE RULE
STATE TAX DIVISION

SERIES 21H
INCOME TAX CREDITS FOR PROPERTY TAXES PAID

§110-21H-1. General.

1.1. Scope. -- This legislative rule addresses implementation of the income tax credits for property taxes paid by certain taxpayers.

1.2. Authority. -- W. Va. Code §§29A-2-6(c) and 11-13MM-6.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect after August 1, 2029.

§110-21H-2. Definitions.

2.1. General Rule. -- Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided under W. Va. Code §§11-10-1 et seq., 11-21-1 et seq., and 11-24-1 et seq.

2.2. Terms defined.

2.2.1. "Ad valorem property tax" means and is limited to the West Virginia *ad valorem* property tax.

2.2.2. "Business" means any activity taxable under W. Va. Code §11-12-1 et seq., which is engaged in by any person in this State.

2.2.3. "Disabled veteran taxpayer" means a person honorably discharged from any branch of the armed services of the United States and who, according to the United States Department of Veteran Affairs, is considered at least 90 percent totally and permanently disabled due solely to service-connected disabilities.

2.2.4. "Eligible motor vehicle" means a motor vehicle on which the *ad valorem* property tax has been paid for the taxable year by the eligible taxpayer, and which is a motor vehicle as defined in this rule.

2.2.5. "Flow-through entity," "conduit entity," or "pass-through entity" means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "flow-through entity," "conduit entity," or "pass-through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 781: Provided, That a publicly traded partnership as defined in section 7704 of the Internal Revenue Code having equity securities registered with the Securities and Exchange Commission under section 12 of

Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 78I, and any other person or entity that is treated as a C corporation for federal income tax purposes, shall be treated as a corporation taxable under W. Va. Code §11-24-1 et seq., for purposes of this rule.

2.2.6. "Motor Vehicle" means the following classes of vehicles defined in W. Va. Code §17A-10-1: Class A, Class B, Class G, Class H, Class T, Class V, Class X, and all-terrain vehicles and utility terrain vehicles as defined in W. Va. Code §20-15-2.

2.2.7. "Person" means and includes an individual, a trust, estate, partnership, pass-through entity, association, company, or corporation.

2.2.8. "Personal property" shall have the same meaning as in W. Va. Code §11-5-1 et seq. For the purposes of this rule, the term "personal property" shall not include a working interest in any oil, natural gas, or natural gas liquid producing property or any property of a public service company.

2.2.9. "Personal property taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against personal property that are timely paid during the calendar year and determined after any application of any discount for early payment of taxes. For example, if a taxpayer receives a personal property tax assessment of \$200, but pays the assessment before the due date to take advantage of a discount and so pays \$195 in full satisfaction of the assessment, then the "personal property taxes paid" would be the \$195 actually paid, and not the \$200 assessed amount. "Personal property taxes paid" does not include any untimely *ad valorem* property tax paid, or any payment of delinquent *ad valorem* property tax, or payment of "back tax" *ad valorem* property taxes, or any penalty or interest for late payment of property taxes. For purposes of determining personal property taxes paid, the phrase "during the calendar year" refers to the personal income tax taxable year or the corporation net income tax taxable year, whichever applies, during which the personal property taxes were paid, and does not refer to the property tax year.

2.2.10. "Public service company" means a corporation or other business entity which delivers services considered essential to the public interest that are regulated by the applicable federal or state regulatory body, including, but not limited to, businesses furnishing electricity, natural gas, telecommunications, and water, and those transporting personal property or passengers, including, but not limited to, airlines, railroads, trucking, and bus companies, and which are centrally assessed by the state for property tax purposes.

2.2.11. "Real property taxes paid" means the aggregate of regular levies, excess levies and bond levies that are timely paid during the calendar year and determined after any application of any discount for early payment of taxes. For example, if a taxpayer receives a real property tax assessment of \$2,000, but pays the assessment before the due date to take advantage of a discount and so pays \$1,950 in full satisfaction of the assessment, then the "real property taxes paid" would be the \$1,950 actually paid, and not the \$2,000 assessed amount. "Real property taxes paid" does not include any untimely *ad valorem* property tax paid, or any payment of delinquent *ad valorem* property tax, payment of supplemental assessments, or payment of "back tax" *ad valorem* property taxes, or any penalty or interest for late payment of property taxes. For purposes of determining real property taxes paid, the phrase "during the calendar year" refers to the personal income tax taxable year during which the real property taxes were paid, and does not refer to the property tax year.

2.2.12. "Timely paid" means paid before October 1 of the property tax year with respect to the first installment, and paid before April 1 of the following calendar year with respect to the second installment.

§110-21H-3. Motor Vehicle Property Tax Adjustment Credit.

3.1. Eligible taxpayers – for purposes of the motor vehicle property tax adjustment credit, the term “eligible taxpayer” has different definitions, depending on the ownership of the vehicle.

3.1.1. Vehicles owned by the taxpayer. In the case of a vehicle that is owned by the taxpayer, an “eligible taxpayer” is any person who owns a motor vehicle for which the *ad valorem* property tax has been timely paid during the corporation net income tax taxable year or the personal income tax taxable year, as applicable. For purposes of this definition, ownership of a motor vehicle includes ownership and possession of a motor vehicle for which a title has been issued by the Division of Motor Vehicles to the eligible taxpayer. For purposes of this definition, ownership of a motor vehicle also includes ownership and possession of a motor vehicle, subject to a purchase financing arrangement whereby a financial institution holds a lien on the motor vehicle, or for which ultimate issuance of title by the Division of Motor Vehicles to the taxpayer, as owner of the motor vehicle, is contingent upon payment in full of the purchase price of the motor vehicle pursuant to an installment payment financing arrangement.

3.1.2. Leased vehicles. In the case of a vehicle that is subject to lease agreement between the owner of the vehicle and the operator of the vehicle, an “eligible taxpayer” is the lessor of the motor vehicle, who owns the motor vehicle for which the *ad valorem* property tax has been timely paid during the corporation net income tax taxable year or the personal income tax taxable year, as applicable. The lessor must pass on to the lessee the value of the tax credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment payable by the lessee on the leased motor vehicle.

3.1.3. Pass-through entities. The term “eligible taxpayer” includes any owner, interest holder, partner or S corporation shareholder that derives conduit income from a pass-through entity.

3.1.4. Motor vehicle dealers. The term “eligible taxpayer” does not include any motor vehicle dealer, motor vehicle dealership, retailer or any business that sells new or used motor vehicles at the retail level, other than a lessor of motor vehicles. In circumstances where any such motor vehicle dealer, motor vehicle dealership, retailer or business that sells new or used motor vehicles at the retail level is engaged in both retail sales of motor vehicles, and leasing of motor vehicles as lessor, the tax credit authorized by this article may only be asserted by such business based upon the *ad valorem* property tax paid on leased motor vehicles, and only to the extent that the lessor has passed on, to the lessee, the value of the tax credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment payable by the lessee on the leased motor vehicle. No credit may be asserted or applied by the business based upon *ad valorem* property tax paid on motor vehicle retail inventories, not actively leased to lessees. To the extent that motor vehicle retail inventories may be held as both motor vehicle retail inventories, and as motor vehicles potentially subject to lease during the taxable year, *ad valorem* property tax paid on such motor vehicles is excluded from eligibility for the tax credit authorized by this rule.

3.2. Amount of credit. -- The amount of the credit is the amount of West Virginia *ad valorem* property tax timely paid on the value of a motor vehicle owned by the eligible taxpayer during the taxpayer’s personal income tax taxable year or corporation net income tax taxable year, whichever is applicable. The payment must have been timely made, meaning that it must be received by the county sheriff on or before the due date for paying the tax. Payments made that are untimely, delinquent, or for “back taxes” are not allowed to be used for purposes of the credit.

3.3. Refundable nature of the credit. -- If the amount of the annual tax credit exceeds the amount of the applicable income tax, then the taxpayer may claim the excess amount as a refundable tax credit. A taxpayer must file a personal income tax return or corporation net income tax return to claim the

refundable credit, even if the taxpayer owes no income tax for the relevant income tax year. However, any refundable tax credit amount is subject to offset, meaning that the amount refunded may be reduced by the amount of any other tax owed by the same taxpayer, pursuant to W. Va. Code §11-10-11(j).

3.4. Transfer or sale of the motor vehicle. -- When there is a sale or transfer of a motor vehicle from an eligible taxpayer to any other person or entity, the consequences are:

3.4.1. The transferor of the motor vehicle retains entitlement to the tax credit for the timely paid *ad valorem* property tax paid on the motor vehicle by the transferor during the transferor's applicable income tax year.

3.4.2. If the transferee of the motor vehicle qualifies as an eligible taxpayer for purposes of the motor vehicle property tax adjustment credit, then the transferee is entitled to the tax credit for the timely paid *ad valorem* property tax paid by the transferee on the motor vehicle during the transferee's applicable income tax year.

3.4.3. The transferor and transferee cannot both take the tax credit for the same taxable year.

3.5. For purposes of claiming the tax credit, the taxpayer is required to prepare and file an annual schedule in a form prescribed by the Tax Commissioner that shows: (1) the amount of personal income tax or corporation net income tax for the taxpayer's taxable year, (2) the amount of *ad valorem* property tax paid on the motor vehicle during the income taxable year, and (3) the amount of credit allowed.

§110-21H-4. Disabled Veteran Real Property Tax Credit.

4.1. Disabled veterans are entitled to a tax credit against their personal income tax in the amount of the timely paid West Virginia *ad valorem* real property tax paid on the disabled veteran's homestead during the personal income tax year.

4.2. For purposes of the disabled veteran real property tax credit, a "qualified disabled veteran" is both:

4.2.1. Honorably discharged from any branch of the armed services of the United States. For purposes of this requirement, the term "any branch of the armed services of the United States" means the Army, Navy, Air Force, Marine Corps and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same have served on full-time active duty pursuant to Title 10 or Title 32 of the United States Code. To claim this credit, the taxpayer must provide documentation of honorable discharge.

4.2.2. Determined by the federal Department of Veterans Affairs to be at least 90 percent totally and permanently disabled due solely to service-connected disabilities. To claim the credit, the taxpayer must provide documentation of the determination by the Department of Veterans Affairs.

4.3. Once the taxpayer has provided documentation regarding discharge status and disability under subsections 4.2.1., and 4.2.2., the taxpayer does not need to provide that documentation for subsequent tax years unless the discharge status or disability has changed, or additional information is requested by the Tax Commissioner.

4.4. For purposes of this credit, a "qualified veteran's homestead" is used and occupied exclusively for residential purposes by the qualified disabled veteran that owns it and is Class II property as described in W.Va. Code §11-8-5. The homestead must be used as an abode, dwelling, or habitat for more than six

consecutive months of the calendar year; and the property must be used only as an abode, dwelling or habitat to the exclusion of any commercial use. The requirement that the property is used as an abode, dwelling or habitat for more than six consecutive months of the calendar year means that the disabled veteran can claim only one property as their homestead during any taxable year.

4.5. Amount of credit. The amount of the credit is the amount of West Virginia *ad valorem* real property tax timely paid on the qualified veteran's homestead during the veteran's personal income tax year. The payment must have been timely made, meaning that it must be received by the county sheriff on or before the due date for paying the tax. Payments made that are untimely, delinquent, or for "back taxes" are not allowed to be used for purposes of the disabled veteran real property tax credit.

4.6. Refundable nature of the credit. If the amount of the annual tax credit exceeds the amount of the qualified disabled veteran's income tax, then the taxpayer may claim the excess amount as a refundable tax credit. A qualified disabled veteran taxpayer must file a personal income tax return to claim the refundable credit, even if the taxpayer owes no income tax for the relevant income tax year. However, any refundable tax credit amount is subject to offset, meaning that the amount refunded may be reduced by the amount of any other tax owed by the same taxpayer, pursuant to W. Va. Code §11-10-11(j).

4.7. Termination of the credit. The disabled veteran real property tax credit is terminated upon the occurrence of any of the following:

4.7.1. Death of the qualified disabled veteran owner of the property for which property taxes were paid;

4.7.2. Sale of the qualified veteran's homestead;

4.7.3. A determination from the Department of Veterans Affairs that the disabled veteran owner no longer qualifies; or

4.7.4. A determination by the county assessor that the property for which the tax credit was approved no longer qualifies for the tax credit.

§110-21H-5. Small Business Property Tax Adjustment Credit.

5.1. Definitions. For the purposes of the small business property tax adjustment credit, the following terms are defined.

5.1.1. "Aggregate appraised value" means the true and actual value of all property in the state owned by the eligible taxpayer including the true and actual value of all property in the state owned by any related entity. For the purpose of this definition, all appraised property will be included into the appraised value including all real property and all personal property, including all property eligible for the credits granted under subsection 3.2 of this rule;

5.1.2. "Related entity" means:

5.1.2.a. An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

5.1.2.b. An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

5.1.2.c. An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

5.1.2.d. A member of the same controlled group as the taxpayer.

5.1.3. For purposes of this rule, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code, as amended: Provided, That paragraph (3) of section 267(c) of the United States Internal Revenue Code shall not apply.

5.1.4. "Small business" means a business with personal property located in this state with an aggregate appraised value of \$1 million or less. For the purposes of this rule, "small business" does not include any person holding a working interest in any oil, natural gas, or natural gas liquid producing property or any public service company that is centrally assessed by the state for property tax purposes.

5.2. Amount of credit. A small business is allowed a tax credit in the amount of 50 percent of the amount of West Virginia *ad valorem* personal property tax timely paid during its applicable income tax year, less the amount of any credit granted under subsection 3.2 of this rule. The payment must have been timely made, meaning that it must be received by the county sheriff on or before the due date for paying the tax. Payments made that are untimely, delinquent, or for "back taxes" are not allowed to be used for purposes of the small business property tax adjustment credit.

5.3. Application of credit.

5.3.1. If the small business taxpayer is subject to the corporation net income tax imposed in W. Va. Code §11-24-1 *et seq.*, then the amount of the credit may be taken against the corporation net income tax liability of the small business for the current corporation net income tax taxable year.

5.3.2. If the small business taxpayer is (1) an electing small business corporation as defined in 26 U.S.C. § 1361, (2) a partnership, (3) a limited liability company that is treated as a partnership for federal income purposes, or (4) a sole proprietorship, then the amount of the credit may be taken against the personal income tax liability imposed under W. Va. Code §11-21-1 *et seq.*

5.3.3. Electing small business corporations, limited liability companies treated as partnerships for federal income tax purposes, partnerships, and other unincorporated organizations shall allocate the small business property tax adjustment credit among its members in the same manner as profits and losses are allocated for the taxable year.

5.4. Refundable nature of the credit. If the amount of the annual tax credit exceeds the amount of the applicable income tax, then the taxpayer may claim the excess amount as a refundable tax credit. A taxpayer must file a personal income tax return or corporation net income tax return to claim the refundable credit, even if the taxpayer owes no income tax for the relevant income tax year. However, any refundable tax credit amount is subject to offset, meaning that the amount refunded may be reduced by the

amount of any other tax owed by the same taxpayer, pursuant to W. Va. Code §11-10-11(j).

5.5. Annual schedule. Taxpayers claiming the small business property tax adjustment credit must prepare and file with the Tax Division an annual schedule showing: (1) the aggregate appraised value of all property in the state owned by the eligible taxpayer and of any related entity, (2) the amount of the applicable income tax paid for the taxable year, (3) the amount of West Virginia *ad valorem* personal property tax paid during the taxable year, and (4) the amount of small business property tax adjustment credit allowed for the taxable year.