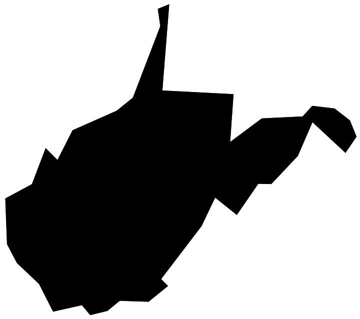

WEST VIRGINIA
TAX EXPENDITURE
STUDY

Corporation Net Income Tax
and Personal Income Tax
Expenditures

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Research Division

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EXECUTIVE SUMMARY

This report covers West Virginia's Personal Income Tax and Corporation Net Income Tax, the major broad-based business tax in the State. The report analyzes all provisions involving exclusions, exemptions, deductions, or credits for both taxes. Some of these provisions constitute government expenditure programs while others are an integral part of the basic tax structure.

CORPORATION NET INCOME TAX

The section on Corporation Net Income Tax provides analysis of explicit and implicit provisions in the laws of West Virginia and the United States that may be considered tax expenditures for this tax. Domestic and foreign corporations doing business in West Virginia are subject to the Corporation Net Income Tax. Some businesses, such as insurance companies and Subchapter S corporations, are exempt from this tax. The Corporation Net Income Tax is levied on federal taxable income adjusted and apportioned according to State law. Some of these adjustments, along with the various exemptions for businesses specifically excluded from taxation, represent tax expenditures for the Corporation Net Income Tax. In addition, West Virginia law provides a variety of tax credits that can be used against Corporation Net Income Tax liability. These credits are also considered tax expenditures.

PERSONAL INCOME TAX

This section of the report provides analysis of the exemptions, exclusions, deductions and credits that can be used to reduce Personal Income Tax liability. The computation of West Virginia Personal Income Tax begins with federal adjusted gross income. The Internal Revenue Code provides for certain exclusions and adjustments in determining federal adjusted gross income. The Personal Income Tax section includes a list of these federal exclusions, but no revenue estimate or analysis has been provided. West Virginia allows some decreasing modifications to federal adjusted gross income. A deduction is also allowed based on the number of personal exemptions claimed on the federal return under federal rules in place prior to 2018. In addition, various credits may be applied to Personal Income Tax liability.

Also included in the Personal Income Tax section is an analysis of three expenditures relating to the taxation of estates and trusts under the Fiduciary Income Tax. Computation of West Virginia Fiduciary Income Tax begins with federal taxable income, as opposed to federal adjusted gross income under Personal Income Tax law. West Virginia taxable income of estates and trusts is derived after specific increasing or decreasing modifications are made to federal taxable income.

INTRODUCTION

Section 11-10-5s(c) of the W. Va. Code requires a tax expenditure report to be submitted to the Legislature by January 15 of each year. In three-year cycles, these reports are intended to analyze tax expenditures for most major State taxes. The law defines the term “tax expenditure” as a provision in the tax laws designed to encourage certain kinds of activities or to aid Taxpayers in special circumstances. Such provisions generally include exclusions, exemptions, deductions, credits, and deferrals from tax. This report covers the Corporation Net Income Tax and Personal Income Tax.

OVERVIEW

The Corporation Net Income Tax and Personal Income Tax accounted for roughly $2.29 billion, or 48.2 percent, of the total General Revenue Fund collections in Fiscal Year 2019.

West Virginia General Revenue Fund Percentage Yield

Revenue Source	FY 2016	FY 2017	FY 2018	FY 2019
Personal Income	44.0%	43.5%	45.2%	44.1%
Corporation Net Income	3.5%	2.8%	2.6%	4.2%
Total	**47.5%**	**46.3%**	**47.8%**	**48.3%**

Personal Income Tax collections generally represent a relatively stable portion of the General Revenue Fund receipts. Lower State corporate tax rates and a weaker energy sector contributed to a reduction in the Corporation Net Income Tax revenue share in recent years. However, the Corporation Net Income Tax revenue share rebounded in Fiscal Year 2019 in response to some income shifting associated with significantly lower federal income tax rates implemented in 2018.

Most exclusions, exemptions, deductions, and credits associated with these taxes may be viewed as tax expenditures. Such tax expenditures tend to escape the usual legislative scrutiny afforded other expenditures in the annual budget approval process because provisions in the tax law often remain intact indefinitely. Programs funded through tax expenditures in effect receive priority funding over all other programs. The goal of this report is to facilitate an examination of both Corporation Net Income Tax and Personal Income Tax expenditures using available resources.

ESTIMATING COSTS OF TAX EXPENDITURES

This study provides estimates of the value of Corporation Net Income Tax and Personal Income Tax expenditures and certain provisions considered necessary to define a model tax structure. Except where otherwise noted, expenditures within the study is examined independently from all other expenditures. Following the establishment of a value in isolation, the influence of outside factors (i.e., other expenditures and Taxpayer behavior) is discussed, where applicable.

Several sources of information were used in the construction of expenditure valuations. These include, among others:

1. Tax return data;
2. Alternative tax data; and
3. Federal and State publications.

In most cases, the revenue impact attributable to the repeal of a tax expenditure is less than the value of that expenditure. This occurs because tax expenditures tend to overlap one another and Taxpayers tend to alter behavior whenever income becomes taxable for the first time.

Caution must be exercised when using values from this report as estimates of tax revenue attributable to potential tax law changes, especially due to the impact of overlapping expenditures. For example, the partial exclusion of a teacher's pension income may overlap the $8,000 exclusion for senior citizens. Therefore, both exclusions would have to be repealed before the State would receive the full value of the senior citizen exclusion.

RATIONALE SUPPORTING TAX EXPENDITURES

This report also attempts to briefly articulate the rationale for the exclusions, exemptions, and deductions evaluated. The rationales set forth in this report are not intended to be all inclusive. The reader may identify other rationales for the various expenditures in the law. Given that statutory language does not often specify the rationale in much, if any, detail, the Department relied solely upon its experience to formulate the assumed rationales set forth in this report. The reader is left to judge the extent to which a particular rationale is appropriate and the extent to which a particular exemption furthers the preferred activity.

CORPORATION NET INCOME TAX

OVERVIEW

The West Virginia Corporation Net Income Tax is a direct income tax imposed on domestic and foreign corporations engaged in business in West Virginia or deriving income from property, activity or other sources in the State. Corporations engaged in a unitary business with one or more other corporations must file a combined report which includes the income of all corporations that are members of the unitary business.

Computation of the Corporation Net Income Tax begins with federal taxable income modified by specific additions and subtractions. A corporation's income is subject to tax without allocation or apportionment if the entire business is transacted within West Virginia. For multistate corporations, certain income items are allocated or apportioned to West Virginia according to State law. The allocated items are rents and royalties from real or tangible personal property, capital gains, interest and dividends, patent or copyright royalties, and gains from sales of natural resources, if the proceeds are nonbusiness income. This type of income is generally allocated to West Virginia if the site of the income-producing property is in the State. With the exception of financial organizations, non-allocated income is generally apportioned by a three-factor formula of property, payroll and sales. A double weight is applied to the sales factor. Financial organizations apportion their income by a single sales receipt factor. West Virginia allocated income plus non-allocated income apportioned to the State becomes taxable income. An adjustment to taxable income is also made for West Virginia net operating losses. Adjusted taxable income after net operating loss deductions is taxed at 6.5 percent.

A large percentage of the Corporation Net Income Tax collections is remitted by relatively few businesses. Since this tax is imposed on net income, collections of the Corporation Net Income Tax can vary significantly from one year to the next based upon the economic status of a few companies. The Tax Cut and Jobs Acts of 2017 motivated taxpayers to maximize their business deduction in the year prior to the implementation of federal tax reform, resulting in a higher level of reportable taxable income in calendar year 2018. The result was an 80 percent gain in Corporation Net Income Tax collections between fiscal years 2018 and 2019.

ORGANIZATION AND ANALYSIS

The Corporation Net Income Tax expenditures discussed in this report are divided into five groups:

- Businesses Exempt from Taxation;
- Federal Taxable Income Expenditures;
- Modifications Decreasing Federal Taxable Income for State Tax Purposes;
- Modifications Decreasing West Virginia Taxable Income; and
- Credits.

The analysis provided for each tax expenditure includes the item's cost to the State, a rationale, and an analysis of the possible revenue scenarios if an expenditure was repealed, where applicable.

BUSINESSES EXEMPT FROM TAXATION

Selected businesses are exempt from Corporation Net Income Tax due to the structure of the business or the nature of the business activity. The following businesses are exempt:

- Sole Proprietorships, Partnerships, and Subchapter S Corporations; and
- Various Miscellaneous Businesses.

An analysis of these exemptions follows.

SOLE PROPRIETORSHIPS, PARTNERSHIPS, AND SUBCHAPTER S CORPORATIONS

STATUTES: W. Va. Code §§11-24-3a(7) and 11-24-5(d)

EXEMPTION: The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law (which excludes sole proprietorships and partnerships) (W. Va. Code §11-24-3a(7))

Corporations electing to be taxed under Subchapter S of the Internal Revenue Code 1986, as amended (W. Va. Code §11-24-5(d))

Rationale

Since the Corporation Net Income Tax is only levied on businesses organized as corporations, an implied exemption exists for businesses organized as sole proprietorships or partnerships. This exemption presumably exists for ease of administration and to avoid double taxation of the business income of the sole proprietor or partnership. Income of businesses organized as sole proprietorships or partnerships is generally included on the Personal Income Tax return of the proprietor or partner. If the partner is itself a corporation, the income is reported on the Corporation Net Income Tax return. Therefore, subjecting these businesses to the Corporation Net Income Tax without removing the income from taxation under the Personal Income Tax statute would subject some business income to double taxation. This is **not** an expenditure. West Virginia follows the federal practice of classifying limited liability companies as partnerships unless the entities elect to be treated as corporations.

The income of Subchapter S corporations is passed through to the stockholders of the corporation. Stockholders include income from the corporation on their individual income tax returns. The exemption for Subchapter S corporations exists to avoid the double taxation of the income of these businesses (once under the Corporation Net Income Tax and once under the Personal Income Tax).

VARIOUS MISCELLANEOUS BUSINESSES

STATUTES: United States Code 15 U.S.C. §381 et seq. (United States Public Law 86-272)

W. Va. Code §§11-24-5(a), 11-24-5(b), 11-24-5(c), 11-24-5(e), 19-23-12, 31C-2-8, 33-22-16, 33-23-29(b), and 33-24-4

EXEMPTION: This exemption includes:

- Corporations Whose Only Activity Is Solicitation of Sales (15 U.S.C. §381 et seq. (United States Public Law 86-272))
- Corporations Exempt from Federal Income Tax (W. Va. Code §11-24-5(a))
- Insurance companies which pay this State a tax upon premiums (W. Va. Code §11-24-5(b))
- Production Credit Associations (Farm Credit Act of 1933) (W. Va. Code §11-24-5(c))
- Section 186 Trusts (W. Va. Code §11-24-5(e))
- Horse or Dog Tracks (W. Va. Code §19-23-12)
- Credit Unions (W. Va. Code §31C-2-8)
- Farmer's Mutual Fire Insurance Companies (W. Va. Code §33-22-16)
- Fraternal Benefit Societies (W. Va. Code §33-23-29(b))
- Nonprofit Hospital, Medical, Dental and Health Service Corporations (W. Va. Code §33-24-4)

VALUE: Values for these exemptions include:

Public Law 86-272:	**Not available**
Federally Exempt Corporations:	**$24.0 million per year**
Insurance Companies:	**Not available**
Production Credit Associations	**Minimal**
Section 186 Trusts:	**Minimal**
Horse or Dog Tracks	**Cannot be disclosed**[1]
Credit Unions:	**$30,000 per year**
Farmer's Mutual Fire Insurance Company:	**Not available**
Fraternal Benefit Societies:	**$200,000 per year**
Nonprofit Healthcare Corporations:	**Not available**

Rationale

These businesses are exempt from the West Virginia Corporation Net Income Tax for a variety of reasons. In some cases (e.g., Corporations Whose Only Activity Is Solicitation of Sales), federal law precludes the State from levying a tax on the specified business. Ease of administration (i.e.,

[1] Due to Taxpayer confidentiality.

Corporations Exempt from Federal Income Tax), double taxation concerns (i.e., Insurance companies which pay this State a tax upon premiums), and the encouragement of certain business activities are some of the other reasons for these exemptions.

FEDERAL TAXABLE INCOME EXPENDITURES

The use of federal taxable income as a starting point for the calculation of West Virginia Corporation Net Income Tax includes various allowances for federal tax expenditures. Federal Tax Expenditures Incorporated within the State Tax Structure are considered tax expenditures for the purposes of this study. An analysis of these exemptions follows.

FEDERAL TAX EXPENDITURES INCORPORATED WITHIN THE STATE TAX STRUCTURE

STATUTE: W. Va. Code §11-24-3a(44)

EXCLUSION: The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in W. Va. Code §11-24-6.

VALUE: Annual values for these exclusions include:

Cost of goods sold:	**$2,369.2 million**
Compensation of officers:	**$64.8 million**
Salaries and wages less employment credits:	**$404.5 million**
Repairs and Maintenance:	**$27.0 million**
Bad debts:	**$15.6 million**
Rents:	**$68.1 million**
Taxes and licenses:	**$77.1 million**
Interest:	**$93.7 million**
Charitable contributions:	**$2.3 million**
Depreciation:	**$102.1 million**
Depletion:	**$3.6 million**
Advertising:	**$39.3 million**
Pension, profit-sharing, etc. plans:	**$22.0 million**
Employee benefit programs:	**$50.2 million**
Other deductions:	**$527.3 million**
Special deductions:	**$41.0 million**

Rationale

West Virginia uses federal taxable income as the starting point for the calculation of the Corporation Net Income Tax. Deductions granted in the calculation of federal taxable income become implied exclusions from West Virginia taxable income and exist to administer the tax. These implied exclusions exist to ease administration of the Corporation Net Income Tax. As stated in W. Va. Code §11-24-1, "the adoption by this State for its Corporation Net Income Tax purposes of certain provisions of the laws of the United States relating to the determination of income for federal income tax purposes will: (1) simplify preparation of State Corporation Net Income Tax returns by Taxpayers; (2) improve enforcement of the State Corporation Net Income Tax through better use of information obtained from federal income tax audits; and (3) aid interpretation of the State Corporation Net Income Tax law through increased use of federal judicial and administrative determinations and precedents."

The Corporation Net Income Tax is often equated to a tax on profits. Some of the items mentioned above, such as cost of goods sold, are an integral part of the definition of net income or profit. Those items necessary for the definition of net income may **not** be tax expenditures. Inclusions of other items, such as employee benefit programs, may not necessarily be required to define net income and therefore may constitute tax expenditures.

Revenue Analysis

The expenditure values presented in this section were calculated in isolation from any other listed expenditure. Also, calculation of the expenditure value was made without consideration of any portion of the exclusion returned to the original value pursuant to W. Va. Code §11-24-6(b). Thus, caution should be used in adding the values presented above.

MODIFICATIONS DECREASING FEDERAL TAXABLE INCOME FOR STATE TAX PURPOSES

Several deductions are available to corporations in West Virginia as decreasing modifications to federal taxable income in determining taxable income for State purposes. These modifications exist for one of the following reasons:

1. To account for deviations between federal statutes and the W. Va. Code;
2. To account for income for which states are prohibited from taxing; or
3. To remove from taxable income amounts that were added to current federal taxable income and related to prior year deductions not permitted by West Virginia.

West Virginia has codified the following decreasing modifications:[1]

- Refund or Credit for Overpayment of Income-Based Taxes;
- Disallowed Interest Expense;
- Section 78 Dividends Received from Foreign Corporations;
- Salary Expense Not Allowed as a Federal Deduction;
- Subpart F Income;
- Employer Contributions to Medical Savings Accounts;
- Foreign Source Income;
- West Virginia Water or Air Pollution Control Facilities;
- Federal Obligations;
- West Virginia Obligations; and
- Investments Secured by Mortgages and Loans on Residential Property.

An analysis of these modifications follows.

REFUND OR CREDIT FOR OVERPAYMENT OF INCOME-BASED TAXES

STATUTE: W. Va. Code §11-24-6(c)(2)

EXCLUSION: There shall be subtracted from federal taxable income to the extent included therein: The amount of any refund or credit for overpayment of income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this State or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes.

VALUE: **$150,000 per year**

[1] Although W. Va. Code §11-24-6(c)(1) lists an adjustment decreasing federal taxable income for the gain or sale of property acquired prior to July 1, 1967, a proviso applicable to taxable years beginning after December 31, 2008 does not allow the adjustment.

Rationale

For State purposes, West Virginia requires Taxpayers to add back to federal taxable income the income tax deduction. State and local income taxes are deducted on the federal return for the tax year in which the payments are made. Any refund is included in federal taxable income for the tax year in which it is received. Since West Virginia does not allow the federal deduction for income taxes paid, a refund included in federal taxable income may be deducted for State purposes. This exclusion eliminates double taxation of this refund amount and therefore is **not** a tax expenditure.

DISALLOWED INTEREST EXPENSE

STATUTE: W. Va. Code §11-24-6(c)(4)

EXCLUSION: There shall be subtracted from federal taxable income to the extent included therein: The full amount of interest expense actually disallowed in determining federal taxable income which was incurred or continued to purchase or carry obligations or securities of any State or of any political subdivision thereof.

VALUE: **$150,000 per year**

Rationale

This expenditure exists in recognition that the identified interest expense is a normal business expense at the State and local government level. Interest income from State and municipal government securities is excluded from income for federal income tax purposes due to the intergovernmental immunity principle. Since it is not included in income for federal income tax purposes, the interest expense related to exempt obligations is disallowed as a deduction at the federal level.

West Virginia requires Taxpayers to make an increasing modification to federal taxable income for State income tax purposes for interest or dividends received from any State or local bonds or securities. While recognizing the interest received on State and local securities as income, this expenditure identifies the expenses incurred in holding or carrying these securities as legitimate business expenses for State tax purposes.

West Virginia provides a modification to taxable income for its own obligations and those of its political subdivisions. This expenditure is analyzed later in this section.

SECTION 78 DIVIDENDS RECEIVED FROM FOREIGN CORPORATIONS

STATUTE: W. Va. Code §11-24-6(c)(5)

EXCLUSION: There shall be subtracted from federal taxable income to the extent included therein: The amount required to be added to federal taxable income as a dividend received from a foreign (non-United States) corporation under Section 78 of the Internal Revenue Code of 1986, as amended, by a corporation electing to take the foreign tax credit for federal income tax purposes.

VALUE: **$6.1 million per year**

Rationale

This expenditure exists to preclude double taxation, once by the State and once by a foreign country. Section 78 dividends are dividends received from a foreign corporation by a corporation that elects to take the foreign tax credit.

SALARY EXPENSE NOT ALLOWED AS A FEDERAL DEDUCTION

STATUTE: W. Va. Code §11-24-6(c)(6)

EXCLUSION: There shall be subtracted from federal taxable income to the extent included therein: The amount of salary expenses disallowed as a deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51 of the Internal Revenue Code of 1986, as amended.

VALUE: **$440,000 per year**

Rationale

Taxpayers claiming a Federal Work Opportunity Tax Credit (formerly the Federal Jobs Credit) on the federal Corporation Net Income Tax return must reduce their salary expense deduction for federal tax purposes by the total of salaries upon which the credit is calculated. West Virginia, however, does not offer a similar credit. Therefore, such salary expenses are a legitimate business deduction for State tax purposes.

SUBPART F INCOME

STATUTE: W. Va. Code §11-24-6(c)(7)

EXCLUSION: There shall be subtracted from federal taxable income to the extent included therein: The amount included in federal adjusted gross income by the operation of Section 951 of the Internal Revenue Code of 1986, as amended.

VALUE: **$7.1 million per year**

Rationale

This expenditure exists to preclude double taxation, once by the State and once by a foreign country. Subpart F income is composed of earnings and profits of controlled foreign corporations exclusive of any income from sources within the United States.

EMPLOYER CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS

STATUTE: W. Va. Code §11-24-6(c)(8)

EXCLUSION: There shall be subtracted from federal taxable income to the extent included therein: Employer contributions to medical savings accounts established pursuant to section fifteen, article sixteen, chapter thirty-three of the W. Va. Code to the extent included in federal adjusted gross income for federal income tax purposes less any portion of employer contributions withdrawn for purposes other than payment of medical expenses.

VALUE: **$0 per year**

Rationale

This expenditure exists to encourage the formation and use of medical savings accounts.

FOREIGN SOURCE INCOME

STATUTE: W. Va. Code §11-24-6(c)(9)

EXCLUSION: There shall be subtracted from federal taxable income to the extent included therein: Any amount included in federal adjusted gross income which is foreign source income.

VALUE: **$15.2 million per year**

Rationale

This exclusion exists to preclude double taxation, once by the State and once by a foreign country. A decreasing modification is allowed for foreign source income, as defined, if it was included in federal taxable income, less attributable expenses.

WEST VIRGINIA WATER OR AIR POLLUTION CONTROL FACILITIES

STATUTE: W. Va. Code §11-24-6(e)

EXCLUSION: If the Taxpayer so elects under W. Va. Code §11-24-6(e)(2), there shall be: (A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this State of water pollution control facilities or air pollution control facilities as defined in Section 169 of the Internal Revenue Code; and (B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of the water pollution control facilities or air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

VALUE: **Cannot be disclosed[1]**

Rationale

This expenditure exists to encourage investment in water and air pollution control devices in West Virginia. Deducting the full cost of pollution control devices in a single year provides a greater benefit to the Taxpayer than a normal depreciation allowance. Facility modifications are often necessary to comply with various Federal pollution control regulations.

FEDERAL OBLIGATIONS

STATUTE: W. Va. Code §11-24-6(f)(1)(A)

ADJUSTMENT: West Virginia taxable income is reduced by an amount equal to share of total assets attributable to securities or obligations of the United States Government or its instrumentalities.

VALUE: **$330,000 per year**

Rationale

This modification exists for compliance with the immunity of the federal government and its instrumentalities from State taxation. Codified in federal statutes, the prohibition reads in part as follows:

> "Except as otherwise provided by law, all stocks, bonds, Treasury notes and other obligations of the United States, shall be exempt from taxation by . . . other State or municipal or local authority."

The statute was revised in 1959 to provide an exception for nondiscriminatory franchise taxes imposed on corporations. The West Virginia Corporation Net Income Tax is a direct tax on net income. Thus, the State cannot subject federal obligations to the tax. If legislative action repealing

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[1] Due to Taxpayer confidentiality.

the above cited adjustment would be enacted, the prohibition against taxation would still exist. Therefore, this modification is **not** a tax expenditure.

WEST VIRGINIA OBLIGATIONS

STATUTE: W. Va. Code §11-24-6(f)(1)(B)

ADJUSTMENT: West Virginia taxable income is reduced by an amount equal to share of total assets attributable to West Virginia State government securities or obligations.

VALUE: **$10,000 per year**

Rationale

The purpose of this expenditure is presumably to reduce the cost of borrowed money for West Virginia and local governments. An adjustment to taxable income for government securities reduces the cost of holding government obligations. The reduced cost makes the securities more attractive to investors and thus makes the marketing of State and local bonds easier. If the security instruments are easier to sell, the governmental unit selling the securities can obtain financing at lower interest rates.

INVESTMENTS SECURED BY MORTGAGES AND LOANS ON RESIDENTIAL PROPERTY

STATUTE: W. Va. Code §§11-24-6(f)(1)(C) and 11-24-6(f)(1)(D)

ADJUSTMENT: West Virginia taxable income is reduced by an amount equal to share of total assets attributable to residential mortgage securities related to West Virginia residential property.

VALUE: **$480,000 per year**

Rationale

This expenditure exists to encourage investments or loans on West Virginia residential property occupied by non-transients. The preferential treatment for these obligations presumably lowers the cost of the investment instruments by reducing the tax imposed on the income from the loans. The intention is for part of the reduced cost in holding the identified securities to be passed on to the loan recipients. Thus, housing may be more affordable.

MODIFICATION DECREASING WEST VIRGINIA TAXABLE INCOME

A modification to West Virginia taxable income is available to corporations. The decreasing modification to West Virginia taxable income is a Net Operating Loss Deduction. An analysis of this expenditure follows.

WEST VIRGINIA NET OPERATING LOSS DEDUCTION

STATUTE: W. Va. Code §11-24-6(d)

DEDUCTION: There is allowed as a deduction for the taxable year an amount equal to the aggregate of: (1) The West Virginia net operating loss carryovers to that year; plus (2) the net operating loss carrybacks to that year: Provided, that no more than three hundred thousand dollars of net operating loss from any taxable year beginning after the thirty-first day of December, one thousand nine-hundred ninety-two may be carried back to any previous taxable year.

VALUE: **$200.0 million per year**

Rationale

This expenditure exists to extend the concept of "net income" across multiple years and thus reduce the tax liability of corporations that experience "net losses." In some years, the normal business expenses of a corporation may be greater than income, thus resulting in a "net loss." The carryback and/or carryforward provisions of the net operating loss statute permit the corporation to apply the loss (deductions in excess of income) to other tax years where income exceeded deductions. Thus, instead of the activities of a single year determining taxable income, calculation of taxable income may be based, in part, on activities from other years. The West Virginia net operating loss deduction is only available to corporations with business operations located in the State and that filed Corporation Net Income Tax returns in previous tax years. A net operating loss deduction of a multi-state corporation is subject to West Virginia allocation and apportionment rules. Except for the provision limiting the amount of carryback, West Virginia generally follows Section 172 of the Internal Revenue Code of 1986, as amended.[1]

The Tax Cuts and Jobs Act made changes to the Net Operating Loss Deduction. For tax years beginning on or before December 31, 2017, net operating losses could be carried back two years and carried forward twenty years with no taxable income limitation. For tax years ending after December 31, 2017, there is no carryback for net operating losses. The Net Operating Loss Deduction is limited to 80 percent of taxable income and can be carried forward indefinitely.

[1] W. Va. Code §11-24-3 provides that terms used in W. Va. Code §11-24 "shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by context or definition ..." The statute defines the term "Internal Revenue Code of 1986" as the Internal Revenue Code of the United States enacted by the Federal Tax Reform Act of 1986. The 1986 act provided that net operating losses could be carried back for three years and carried forward for fifteen. However, the Taxpayer Relief Act of 1997 provides for carry back of two years and carry forward of twenty years. Additionally, the American Recovery and Reinvestment Act of 2009 provides that small businesses may carry back losses for five years.

CREDITS

W. Va. Code provides for the application of various tax credits against the Corporation Net Income Tax. Some credits provide qualifying businesses with an investment or employment incentive. Others provide relief from double taxation or to utilities providing aid to low-income households. These tax credits are listed below.

ECONOMIC DEVELOPMENT TAX CREDITS

- Economic Opportunity Tax Credits
- Manufacturing Investment Tax Credit

EMPLOYMENT TAX CREDITS

- Apprenticeship Training Credit
- Military Incentive Tax Credit

CREDITS THAT AID LOW-INCOME FAMILIES

- Credit for Reducing Utility Charges to Low-Income Families
- Credit for Reducing Telephone Charges to Low-Income Families

MISCELLANEOUS TAX CREDITS

- Neighborhood Investment Program Credit
- Environmental Agricultural Equipment Tax Credit
- Manufacturing Property Tax Adjustment Credit
- Credit for Utility Taxpayers with Net Operating Loss Carryovers
- Historic Rehabilitated Buildings Investment Credit
- Innovative Mine Safety Technology Tax Credit
- Farm to Food Bank Tax Credit

EXPIRED AND TERMINATED TAX CREDITS

- Alternative-Fuel Tax Credits
- Strategic Research and Development Tax Credit
- Film Industry Investment Tax Credit

Many of the credits listed above may also be applied against other business and personal taxes. Expenditure values presented in this section represent the amounts applied against **only** Corporation Net Income Tax. Often, the credit claimed against the Corporation Net Income Tax has been reduced by the application of the credit against other taxes according to the priority order specified by statute or regulations. Thus, the credit amounts claimed against Corporation Net Income Tax may be negligible compared to the total cost of the credit taken against all taxes. An analysis of these expenditures follows.

ECONOMIC DEVELOPMENT TAX CREDITS

Economic Development Tax Credits exist to promote business expansion in the State. Such credits require either creation of employment or capital outlays for certain qualified investments to qualify.

ECONOMIC OPPORTUNITY TAX CREDITS

STATUTE: W. Va. Code §11-13Q

CREDIT: The Economic Opportunity Tax Credits generally promote job creation and investment within the State through capital incentives.

VALUE: **$4.0 million per year**

Rationale

The Economic Opportunity Tax Credits are incentives designed to promote job creation through capital investment. These credits are generally a capital investment tax credit pro-rated over a 10-year period for businesses engaged in the activities of manufacturing, information processing, warehousing, goods distribution exclusive of retail, destination-oriented recreation and tourism, research and development, and the relocation of a corporate headquarters. The share of qualified capital investment subject to tax credit is based on the number of new jobs created as the result of the additional capital investment. The share of total payroll represented by the new employees determines the share of total tax liability offset by tax credit. A minimum number of new jobs must be created and maintained to gain entitlement to tax credit benefits.

MANUFACTURING INVESTMENT TAX CREDIT

STATUTE: W. Va. Code §11-13S

CREDIT: The Manufacturing Investment Tax Credit promotes the expansion, growth and revitalization of industrial facilities in the State through a capital investment incentive.

VALUE: **$5.0 million per year**

Rationale

The Manufacturing Investment Tax Credit is an incentive designed to promote manufacturing expansion and revitalization through capital investment. The tax credit equals 5 percent of qualified capital investment pro-rated over a 10-year period for businesses engaged in the activity of manufacturing. The tax credit may offset up to 60 percent of the West Virginia Corporation Net Income Tax liability of the qualified manufacturing entity.

EMPLOYMENT TAX CREDITS

Employment Tax Credits generally exist to encourage employee training and the hiring of certain individuals, such as qualified unemployed veterans or other military personnel.

APPRENTICESHIP TRAINING TAX CREDIT

STATUTE: W. Va. Code §11-13W

CREDIT: The Apprenticeship Training Tax Credit promotes on-the-job training of construction trade apprentices.

VALUE: **$100,000 per year**

Rationale

The Apprenticeship Training Tax Credit provides qualified construction trade employers with a $2 per hour tax credit for the training of an apprentice up to a maximum of $2,000 per year or 50 percent of wages paid to such person, whichever is less. The tax credit may provide some incentive for additional training of apprentices.

MILITARY INCENTIVE TAX CREDIT

STATUTE: W. Va. Code §11-24-12

CREDIT: Military Incentive Credit promotes the hiring of veterans and National Guard members.

VALUE: **Minimal**

Rationale

The Military Incentive Tax Credit provides employers who hire a qualified unemployed member of the West Virginia National Guard and reserve forces or unemployed disabled veteran with a one-time employment tax credit generally equal to either 25 percent of up to the first $5,000 in wages paid during the year or the disability percentage multiplied by the first $5,000 of wages paid a qualified disabled veteran. The program is administered by WorkForce West Virginia.

CREDITS THAT AID LOW-INCOME FAMILIES

These credits are a form of government assistance for aiding low-income households. Public utilities and local telephone companies are compensated for the value of rate reductions to low-income customers through these tax credit programs.

CREDIT FOR REDUCING UTILITY CHARGES TO LOW-INCOME FAMILIES

STATUTE: W. Va. Code §§11-13F and 11-24-11

CREDIT: These credits are a form of government assistance for aiding low-income households.

VALUE: **$0 per year**

Rationale

This is a credit against the tax on the cost of providing electric, natural gas, or water utility services at reduced rates to qualified low-income residential customers that have not been reimbursed by any other means.

Revenue Analysis

The cost is $0 against Corporation Net Income Tax because roughly $6.0 million in program costs are fully absorbed by the credit against Business and Occupation Tax.

CREDIT FOR REDUCING TELEPHONE CHARGES TO LOW-INCOME FAMILIES

STATUTE: W. Va. Code §§11-13G and 11-24-11a

CREDIT: These credits are a form of government assistance for aiding low-income households.

VALUE: **$0 per year**

Rationale

This credit is allowed against the primary tax liability of an eligible Taxpayer for the cost of providing telephone services at special reduced rates to qualified low-income residential customers who have not been reimbursed by any other means.

This is a credit against the tax on the cost of providing telephone service at special reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

Revenue Analysis

No credit has been claimed in recent years.

MISCELLANEOUS TAX CREDITS

Miscellaneous Tax Credits exist to incentivize investments in a variety of activities, such as increasing charitable contributions, purchases of environmentally friendly agricultural equipment, and rehabilitating certain properties.

NEIGHBORHOOD INVESTMENT PROGRAM CREDIT

STATUTE: W. Va. Code §11-13J

CREDIT: The Neighborhood Investment Program Credit provides qualified Taxpayers with a tax credit equal to 50 percent of charitable contributions made to an approved organization.

VALUE: **$100,000 per year**

Rationale

The Neighborhood Investment Program Credit provides qualified contributing Taxpayers with a tax credit equal to 50 percent of charitable contributions made to an approved organization that received project approval along with an allotment of tax credits from the West Virginia Development Office based on recommendations from a neighborhood investment advisory board. The Taxpayer may use credits received from a qualifying organization to offset up to 50 percent of income tax liability. The minimum contribution for purposes of the tax credit is $500 per year and the maximum contribution is $200,000 per year. Excess tax credits may be carried forward for a period of up to four additional years. The total maximum amount of tax credit allocated by the State in any given year is limited to $3 million. The Program may stimulate additional giving for tax credit eligible charitable projects.

ENVIRONMENTAL AGRICULTURAL EQUIPMENT TAX CREDIT

STATUTE: W. Va. Code §11-13K

CREDIT: The Environmental Agricultural Equipment Tax Credit provides eligible Taxpayers with an incentive to purchase certain types of “environmentally friendly” agricultural equipment.

VALUE: **Minimal**

Rationale

The Environmental Agricultural Equipment Tax Credit provides eligible Taxpayers with an incentive to purchase certain types of “environmentally friendly” agricultural equipment. The tax credit equals 25 percent of the purchase price of qualified machinery up to a maximum of $2,500 for purchases in a single year with a maximum carryover period of five years.

MANUFACTURING PROPERTY TAX ADJUSTMENT CREDIT

STATUTE: W. Va. Code §11-13Y

CREDIT: The Manufacturing Property Tax Adjustment Credit provides West Virginia manufacturers with a State tax credit equal to the amount of local West Virginia property taxes paid on manufacturing inventory.

VALUE: **$7.0 million per year**

Rationale

The Manufacturing Property Tax Adjustment Credit provides West Virginia manufacturers with a State tax credit equal to the amount of local West Virginia property taxes paid on manufacturing inventory. The State effectively pays a portion of the local property tax bill out of State funds. The current State Constitution requires assessment and collection of local property taxes on business inventory, including certain manufacturing inventories. Voters approved a narrow Constitutional Amendment in 1984 that removed the inventory tax from unaltered inventory destined for export outside of this State. However, other business inventories remain subject to the local property tax. There are currently fourteen states imposing property tax on certain business inventories, including Kentucky, Maryland, Virginia, and West Virginia. Eight states currently impose property taxes on manufacturing inventory, including Arkansas, Georgia, Kentucky, Louisiana, Massachusetts, Oklahoma, Texas, and West Virginia.

CREDIT FOR UTILITY TAXPAYERS WITH NET OPERATING LOSS CARRYOVERS

STATUTE: W. Va. Code §11-24-11b

CREDIT: This credit seeks to preserve a portion of value to electric utility Taxpayers with net operating loss carryovers lost due to tax rate reductions.

VALUE: **$0 per year**

Rationale

This credit was designed to preserve a portion of the value of net operating loss assets of electric power companies to offset losses due to reduction of the State Corporation Net Income Tax rate.

HISTORIC REHABILITATED BUILDINGS INVESTMENT CREDIT

STATUTE: W. Va. Code §11-24-23a

CREDIT: The Historic Rehabilitated Buildings Investment Credit is available to qualified rehabilitated building projects located in West Virginia that also qualify for the 20 percent federal historic rehabilitation tax credit.

VALUE: **$500,000 per year**[1]

Rationale

The Historic Rehabilitated Buildings Investment Credit is available to qualified rehabilitated building projects located in West Virginia that also qualify for the 20 percent federal historic rehabilitation tax credit. Prior to January 1, 2018, the State tax credit equaled 10 percent of qualified expenditures for historic rehabilitation as approved by the West Virginia Division of Culture and History and designated by the National Park Service as a "certified historic structure." Effective January 1, 2018, the State tax credit is equal to 25 percent of the qualified expenditures. The West Virginia tax credit is transferable to other Taxpayers. The tax credit was intended to promote historic building rehabilitation.

INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT

STATUTE: W. Va. Code §11-13BB

CREDIT: The Innovative Mine Safety Technology Tax Credit provides West Virginia coal mining companies with a State tax credit equal to 50 percent of the purchase cost of qualified safety equipment.

VALUE: **$0 per year**

Rationale

The Innovative Mine Safety Technology Tax Credit provides West Virginia coal mining companies with a State tax credit equal to 50 percent of the purchase cost of qualified safety equipment. The Office of Miners' Health Safety and Training, pursuant to applications for the tax credit, may allocate no more than $2 million of Innovative Mine Safety Technology Tax Credit per fiscal year. No one taxpayer may be allocated more than $100,000 in credit in any given year. The tax credit is intended to promote new investment innovative coal mine safety technology.

[1] This is an average value due to variation in claims year-to-year.

FARM TO FOOD BANK TAX CREDIT

STATUTE: W. Va. Code §§11-13DD

CREDIT: The credit is equal to 10 percent of the value of the donated edible agricultural products.

VALUE: **Minimal**

Rationale

A tax credit is available to farmers who make donations of edible agricultural products to one or more nonprofit food programs in West Virginia. The credit is equal to 10 percent of the value of the donated edible agricultural products, not to exceed $2,500 during a taxable year. Any credit remaining after application against the taxpayer's tax liabilities for the current year may be carried forward to the next four taxable years. No more than $200,000 of tax credits may be allocated in any fiscal year. Tax credits are allocated in the order in which the donation forms are received.

The purpose of the credit is to promote fresh, healthy and local agricultural products for food banks and to provide an incentive for farmers to donate to food banks in this state.

EXPIRED AND TERMINATED CREDITS

Tax credits are not always available in perpetuity. Some credits include an expiration date when the statute is enacted. Others are terminated by enactment of legislation.

ALTERNATIVE-FUEL TAX CREDITS

STATUTE: W. Va. Code §11-6D

CREDIT: The Alternative-Fuel Tax Credit program includes two separate tax credits for: (1) the purchase of a qualified alternative fuel vehicle and (2) the development of alternative fueling infrastructure.

VALUE: This credit varies by year due to statutory modifications:

`Tax Year	Amount Claimed	Number of Filers
2011	$ 71,000	15
2012	$180,000	40
2013	$140,000	27
2014	$ 55,000	15
2015	$ 45,849	11
2016	$ 12,791	6
2017	Minimal	

Rationale

The Alternative-Fuel Tax Credit program provides tax incentives for the purchase of qualified alternative-fuel motor vehicles and the development of alternative fueling infrastructure. The vehicle tax credit is either 35 percent of the purchase cost or 50 percent of the conversion cost up to a maximum of $7,500 for a qualified alternative-fuel vehicle. The maximum tax credit is a higher $25,000 if the qualified vehicle weighs more than 26,000 pounds. The commercial infrastructure tax credit is 20 percent of the construction or installation costs for a fueling center up to a maximum of $400,000 per facility.

This tax credit statute was originally a component part of a comprehensive horizontal well natural gas regulatory bill and included electric and hybrid vehicles and those that operated using hydrogen or a fuel mixture of at least 85 percent alcohols by volume. The tax credit program was modified in 2013 to generally apply only to natural gas vehicles and natural gas fueling infrastructure. Other types of alternative-fuel capable vehicles were already in plentiful supply prior to the enactment of this tax incentive program in 2011. This program was terminated on December 31, 2017.

STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT

STATUTE: W. Va. Code §11-13R

CREDIT: The Strategic Research and Development Tax Credit was available to qualified Taxpayers who conducted qualified research and development projects in West Virginia.

VALUE: **Cannot be disclosed**[1]

Rationale

The Strategic Research and Development Tax Credit was available to qualified Taxpayers who conducted qualified research and development projects in West Virginia. The tax credit equaled the greatest of 3 percent of annual qualified expenditures or 10 percent of annual qualified expenditures in excess of the prior three-year average.

FILM INDUSTRY INVESTMENT TAX CREDIT

STATUTE: W. Va. Code §11-13X

CREDIT: The Film Industry Investment Tax Credit promotes of film or audiovisual projects in West Virginia.

VALUE: **$3.0 million per year**

Rationale

The Film Industry Investment Tax Credit is an incentive designed to promote the film industry in West Virginia through partial reimbursement of qualified film expenditures through marketable tax credits. The Film Industry Investment Tax Credit was terminated effective July 1, 2018. One probable reason for the repeal was the fact that most of the credits were taken for filming commercials, not movies.

No new Film Tax credits can be authorized after July 1, 2018. Film Tax credits issued prior to that date can be claimed through the second taxable year after the taxable year in which the expenditure occurred.

[1] Due to Taxpayer confidentiality.

PERSONAL INCOME TAX

OVERVIEW

The Personal Income Tax is the largest source of revenue for West Virginia. This tax is imposed on the West Virginia taxable income of resident individuals, estates, and trusts regardless of where income is earned. Nonresident individuals, estates, and trusts are also subject to the tax on income received from West Virginia sources. Corporations, partnerships[1] (but not partners), and certain trusts and associations are exempt from West Virginia Personal Income Tax. While estates and trusts are taxed under the Personal Income Tax statute, related tax liability is calculated on the Fiduciary Income Tax return, not the Personal Income Tax return. For the purposes of this study, the Personal Income Tax sections deal with income tax on individuals while the Fiduciary Income Tax sections deal with income tax on estates and trusts.

For individuals, computation of West Virginia taxable income begins with federal adjusted gross income. Specific increasing or decreasing modifications are applied, resulting in West Virginia adjusted gross income. To determine West Virginia taxable income, the Taxpayer then takes a deduction based on the number of personal exemptions claimed on the federal return under federal rules in place prior to 2018.

Unlike the tax on individuals, federal taxable income is the starting point for the calculation of the West Virginia Fiduciary Income Tax for estates and trusts. West Virginia taxable income is derived after specific increasing or decreasing modifications are made to federal taxable income. The rate schedule for both resident and nonresident estates and trusts is the same as Personal Income Tax rates for all Taxpayers, except for married Taxpayers filing separate returns.

Personal Income Tax and Fiduciary Income Tax rates differ with each taxable income category. Although the rates increase as taxable income increases, each marginal rate is independent of every other rate. The following tables provide the tax rates for all Taxpayers (excluding married filing separately) and married filing separately.

West Virginia Tax Rate Schedule

All Taxpayers **Excluding** Married Filing Separately

TAXABLE INCOME		TAX LIABILITY		
Over	Not Over	Base Tax	Plus	Over
$0	$10,000	$0.00	3.0%	$0
$10,000	$25,000	$300.00	4.0%	$10,000
$25,000	$40,000	$900.00	4.5%	$25,000
$40,000	$60,000	$1,575.00	6.0%	$40,000
$60,000		$2,775.00	6.5%	$60,000

[1] For tax years beginning after December 31, 2017, partnerships may elect to pay additional West Virginia Personal Income Tax based on federal audit of partnership.

West Virginia Tax Rate Schedule

Married Filing Separately Only

TAXABLE INCOME		TAX LIABILITY		
Over	Not Over	Base Tax	Plus	Over
$0	$5,000	$0.00	3.0%	$0
$5,000	$12,500	$150.00	4.0%	$5,000
$12,500	$20,000	$450.00	4.5%	$12,500
$20,000	$30,000	$787.50	6.0%	$20,000
$30,000		$1,387.50	6.5%	$30,000

ORGANIZATION AND ANALYSIS

The Personal Income Tax expenditures discussed in this report are divided into six groups:

- Exclusions;
- Exemptions;
- Decreasing Modifications;
- Federally Mandated Exemptions;
- Other Decreasing Modifications; and
- Credits.

The analysis provided for each tax expenditure includes a cost to the State and a rationale for each item.

EXCLUSIONS

The existence of Personal Income Tax exclusions reduces West Virginia taxable income by reductions to federal adjusted gross income. Such exclusions include a variety of federal above the line exclusions and those benefitting low-income Taxpayers.

FEDERAL ABOVE THE LINE EXCLUSIONS

Computation of West Virginia taxable income begins with federal adjusted gross income. For that reason, items excluded from the definition of federal adjusted gross income are also excluded for West Virginia Personal Income Tax purposes, unless specific additions are included in the W. Va. Code. Some of these exclusions include:

- Deductible Contributions to Individual Retirement Accounts (IRAs) and Keogh Accounts;
- The 50 Percent Self-Employment Tax Exclusion;
- The Self-Employed Health Insurance Deduction;
- The Self-Employed SEP Deduction;
- Early Withdrawal of Savings;
- Alimony Paid;
- Nontaxable Social Security Benefits;[1]
- Nontaxable Tier I Railroad Retirement Benefits;[2]
- Workers' Compensation Benefits;
- Veterans' Benefits;
- Life Insurance Annuity Payments;
- Contributions to 401K Plans;
- Interest on West Virginia or Municipal Tax-Exempt Bonds;
- Income Earned Abroad;
- Capital Gains on Home Sales;
- Deferral for Reinvesting Scholarship and Fellowship Income;
- Employee Meals and Lodging;
- Employer Contributions for Medical Insurance and Care and Pensions;
- Employer-Provided Child Care;
- Benefits and Allowances to Armed Forces Personnel;
- Combat Pay Received for Desert Shield Service;[3]
- Employer-Paid Premiums on Life, Disability, and Health Insurance;

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[1] A portion of a Taxpayer's Social Security benefits or equivalent Tier I Railroad Retirement benefits may be taxable for federal income tax purposes and therefore included in federal adjusted gross income. The amount of benefits that are taxable is based on the Taxpayer's combined income over a specified base amount. The base amount is one of the following:

1. $32,000 for married Taxpayers filing jointly;
2. $0 for married Taxpayers filing separately; or
3. $25,000 for all other Taxpayers.

All Tier I Railroad Retirement benefits are taxable for federal income tax purposes.

[2] *Ibid*.

[3] Under W. Va. Code §11-12-12b, combat pay received for Desert Shield service, as defined in Section 61 of that Article, which is exempt from federal income tax under Section 112 of the Internal Revenue Code, is exempt from Personal Income Tax.

- Oil and Gas Exploration Costs;
- Depreciation and Expense Deductions;
- Amortization of Business Start-Up Costs;
- Capital Gains at Death;
- Expenses of Capital Outlays for Farm Income Stabilization;
- Capital Asset Treatment of Timber Income and Iron Ore and Coal Royalties;
- Research and Development Costs;
- Amortization of Pollution Control Facilities and Reforestation Expenditures;
- Student Loan Interest Deduction; and
- Educator Expense Deduction.

This list is not all-inclusive. The estimated revenue loss from the above-mentioned list is $430.0 million per year.

In addition to the exclusions listed above, West Virginia law allows the following exclusion to aid low-income families.

LOW INCOME EXCLUSION

STATUTE: W. Va. Code §11-21-10

EXCLUSION: A deduction from federal adjusted gross income of the amount of earned income included, not to exceed $10,000, except for a husband and wife filing separate returns whose exclusion cannot exceed $5,000 each.

VALUE: **$15.8 million per year**

Rationale

The low-income exclusion exists to provide some tax relief to low income Taxpayers. However, the deduction is only available to Taxpayers with total earned income below the statutory threshold, except those that are claimed on another tax return.

EXEMPTIONS

Any individual Taxpayer, whether resident or nonresident, is allowed a $2,000 exemption for each personal exemption claimed on the federal return under federal rules in place prior to 2018. A surviving spouse is allowed one additional $2,000 exemption for the two taxable years beginning after the death of his or her spouse. Individuals claimed as dependents on another's return can only take one $500 exemption. Estates and trusts are allowed only one $600 exemption. These exemptions include:

- Personal Exemption;
- Surviving Spouse Exemption;
- Exemption for Dependents Claimed on Another's Return; and
- Fiduciary Income Tax Exemption.

An analysis of these exemptions follows.

PERSONAL EXEMPTION

STATUTE: W. Va. Code §11-21-16(a)

EXEMPTION: $2,000 per personal exemption allowed.

VALUE: **$140.0 million per year**

Rationale

The personal exemption provides a tax deduction based on the number of people supported by the reported income. Additional exemptions are allowed for special circumstances (e.g., surviving spouse exemption). The personal exemption could possibly be seen as an allowance to reduce gross income. Such allowances increase the income threshold for income tax filing and provide some level of tax relief to low-income households and to families. In terms of a tax reduction, the value is greater per return at higher income levels.

SURVIVING SPOUSE EXEMPTION

STATUTE: W. Va. Code §11-21-16(c)

EXEMPTION: One additional $2,000 exemption allowed for a surviving spouse for two taxable years beginning after the death of a spouse.

VALUE: **$300,000 per year**

Rationale

This modification exists to help in the transition for the surviving spouse.

EXEMPTION FOR DEPENDENTS CLAIMED ON ANOTHER'S RETURN

STATUTE: W. Va. Code §11-21-16(d)

EXEMPTION: $500 for individuals claimed as dependents on another's return.

VALUE: **$300,000 per year**

Rationale

Dependents claimed on another's return are not allowed a personal exemption for federal income tax purposes under federal rules in place prior to 2018. West Virginia allows a lower exemption for these individuals. The amount for this exemption is equal to the basic federal standard deduction for dependents claimed on another's return in 1987. This partial exemption benefits those dependents claimed on another's return, many of whom are students working part-time.

FIDUCIARY INCOME TAX EXEMPTION

STATUTE: W. Va. Code §11-21-18(1)

EXEMPTION: Exemption of $600 for estates and trusts.

VALUE: **$240,000 per year**

Rationale

For simplicity, estates have the same exemption allowance as on the federal return. Since West Virginia's treatment of estates and trusts are similar, the same $600 exemption is allowed for trusts. The exemption is in lieu of the federal deduction for estates and trusts.

DECREASING MODIFICATIONS

In determining West Virginia taxable income, specific increases or decreases are made to federal adjusted gross income. Most income reduction modifications are tax expenditures. These modifications are available to some, but not all Taxpayers. Decreasing modifications discussed in this section include:

- Decreasing Modification for Resident Full-Time Military Personnel Stationed Outside West Virginia;
- Interest and Dividend Income from State or Local Obligations;
- State Income Tax Refunds;
- Decreasing Modification for Senior Citizens;
- Decreasing Modification for Disabled Persons;
- Decreasing Modification for Surviving Spouses;
- Decreasing Modification for Contributions to Medical Savings Accounts;
- Decreasing Modification for Contributions to West Virginia SMART529 Trust Fund;
- Decreasing Modification for Premiums for Long-Term Care Insurance Policies;
- Decreasing Modification for National Guard and Reserve Forces Called to Active Duty;
- Decreasing Modification for Amounts Expended for Tolls;
- Decreasing Modification for Contributions to Private Autism Trust Funds;
- Itemized Deductions for Fiduciaries;
- Pension Exclusions:
    - Military Retirement Benefits;
    - Federal Retirement System Benefits;
    - West Virginia Public Employees' Retirement System Benefits;
    - West Virginia Teachers' Retirement System Benefits;
    - State or Local Police or Firefighters' or Deputy Sheriffs' Retirement Systems Benefits;
    - Additional Military Retirement Exclusion; and
    - Railroad Retirement Benefits;
- Federally Mandated Exclusion:
    - Interest Income from United States Obligations for Personal Income Tax Purposes.

An analysis of these decreasing modifications follows.

DECREASING MODIFICATION FOR RESIDENT FULL-TIME MILITARY PERSONNEL STATIONED OUTSIDE WEST VIRGINIA

STATUTE: W. Va. Code §11-21-7

EXCLUSION: Exclusion for military income earned by military personnel who claim West Virginia as the individuals' State of residence but are stationed outside the State.

VALUE: **Cannot be determined**

Rationale

If a Taxpayer is a member of the United States military forces and the Taxpayer's domicile was in West Virginia at the time the person entered military service, then assignment to duty outside the State does not change the Taxpayer's West Virginia domicile. The member of the armed forces will be liable for West Virginia Personal Income Tax unless the following conditions are met:

1. The Taxpayer had no permanent place of abode in West Virginia during the taxable year; and
2. The Taxpayer did not spend more than 30 not necessarily consecutive days in West Virginia during the taxable year.

These Taxpayers, despite claiming West Virginia as the individuals' State of residence, were stationed elsewhere and did not live in West Virginia during the tax year. This is an implied modification based on an administrative interpretation of the definition of residency for Personal Income Tax purposes.

Revenue Analysis

The revenue loss associated with this decreasing modification could not be determined. Most full-time military personnel are not required to file West Virginia Personal Income Tax returns because such income is exempt from State taxation.

INTEREST AND DIVIDEND INCOME FROM STATE OR LOCAL OBLIGATIONS

STATUTE: W. Va. Code §11-21-12(c)(2)

EXCLUSION: Interest income on West Virginia obligations subject to federal tax but not State tax.

VALUE: **Minimal**

Rationale

Interest income from West Virginia obligations is excluded because these obligations represent funding for State and local projects. A tax on interest income increases the cost of borrowing.

Interest from most State and local obligations is excluded for federal income tax purposes. This income is usually not included in federal adjusted gross income, which is the starting point in calculating West Virginia Personal Income Tax liability. The amount of interest from West Virginia obligations not already excluded in calculating federal adjusted gross income is small. Therefore, the revenue loss from excluding any other interest from State or local obligations is minimal.

STATE INCOME TAX REFUNDS

STATUTE: W. Va. Code §11-21-12(c)(4)

DEDUCTION: Any refund or credit for overpayment of West Virginia income taxes or income taxes of any other taxing jurisdiction to the extent included in gross income for federal income tax purposes.

VALUE: **$4.0 million per year**

Rationale

This decreasing modification is only for Taxpayers who itemized on prior year federal returns. For Taxpayers who itemize on their federal return, state and local income taxes withheld can be deducted on the federal return for the tax year in which the payments are made. The modification is based on the amount of income tax paid, not the tax liability. Therefore, any refund must be included in federal adjusted gross income for the tax year in which it is received. Since West Virginia does not allow a deduction for State and local income taxes paid, a refund included in federal adjusted gross income may be deducted for State purposes. This modification eliminates double taxation of the same income and therefore is **not** a tax expenditure.

DECREASING MODIFICATION FOR SENIOR CITIZENS

STATUTE: W. Va. Code §11-21-12(c)(8)

EXCLUSION: Senior citizen exclusion of up to $8,000 per individual or $16,000 per two-income married couple filing jointly.

VALUE: **$75.5 million per year**

Rationale

This modification provides a significant tax reduction to those aged 65 or older. It was designed as a minimum income exclusion for low-income senior citizens although all Taxpayers over 65 years, whether the individuals are low-income or high-income earners, are allowed this modification.

Revenue Analysis

The repeal of this modification would not necessarily yield the amount shown. The revenue impact for this exemption was calculated in isolation from other exemptions. Therefore, the actual revenue to be gained by the repeal of the decreasing modification for senior citizens would be less than stated above. Other exclusions, such as the decreasing modification for the first $2,000 of military retirement pay, may overlap this modification. Due to these overlapping modifications, legislation to repeal the senior citizen modification would result in a revenue gain of approximately $62.2 million per year.

DECREASING MODIFICATION FOR DISABLED PERSONS

STATUTE: W. Va. Code §11-21-12(c)(8)

EXCLUSION: Permanent disability exclusion of up to $8,000 per individual or $16,000 per married couple filing jointly.

VALUE: **$6.9 million per year**

Rationale

This decreasing modification provides a measure of income tax relief to disabled individuals.

Revenue Analysis

The repeal of this modification would not necessarily yield the amount shown. The revenue impact for this exemption was calculated in isolation from other exemptions. Therefore, the actual revenue to be gained by the repeal of the decreasing modification for disabled persons would be less than stated above. Other exclusions, such as the decreasing modification for the first $2,000 of military retirement pay, may overlap this modification. Due to these overlapping modifications, legislation to repeal the modification for disabled persons would result in a revenue gain of approximately $5.7 million per year.

DECREASING MODIFICATION FOR SURVIVING SPOUSES

STATUTE: W. Va. Code §11-21-12(c)(9)

EXCLUSION: Surviving spouse exclusion of up to $8,000 for the spouse of a person who had attained age 65 or who was certified as totally and permanently disabled prior to death.

VALUE: **Minimal**

Rationale

This modification exists to help in the transition for surviving spouses.

DECREASING MODIFICATION FOR CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS

STATUTE: W. Va. Code §11-21-12(c)(10)

EXCLUSION: Contributions to medical savings accounts established pursuant to W. Va. Code §33-16-15 to the extent included in federal adjusted gross income for federal income tax purposes less any portion of employer contributions withdrawn for purposes other than payment of medical expenses.

VALUE: **$0 per year**

Rationale

This expenditure exists to encourage the formation and use of State medical savings accounts. However, contributions to medical savings accounts that qualify for federal exclusion are also automatically excluded from State taxes because of the State tie-in to federal adjusted gross income. There are no known State medical savings accounts that do not qualify for federal tax exclusions.

DECREASING MODIFICATION FOR CONTRIBUTIONS TO WEST VIRGINIA SMART529 TRUST FUND

STATUTE: W. Va. Code §11-21-12a

EXCLUSION: Payments made to either the West Virginia Prepaid Trust Fund or the West Virginia SMART529 Trust Fund.

VALUE: **$2.5 million per year**

Rationale

This modification exists to encourage Taxpayers to save for their children's or other family member's college education. This modification is available for contributions to either the West Virginia Prepaid Trust Fund or the West Virginia SMART529 Trust Fund. The West Virginia Prepaid Trust Fund closed to new enrollments on March 8, 2003, but contributions can still be made to the plans of those who were already enrolled before this date. Most of the Taxpayers using this modification are making contributions to SMART529 plans.

DECREASING MODIFICATION FOR PREMIUMS FOR LONG-TERM CARE INSURANCE POLICIES

STATUTE: W. Va. Code §11-21-12c

EXCLUSION: Payments for premiums for a long-term care policy that offers coverage to either the Taxpayer or the Taxpayer's spouse, parent, or dependent.

VALUE: **$1.3 million per year**

Rationale

This expenditure exists to encourage the purchase of long-term care insurance policies.

DECREASING MODIFICATION FOR NATIONAL GUARD AND RESERVE FORCES CALLED TO ACTIVE DUTY

STATUTE: W. Va. Code §11-21-12e

EXCLUSION: Exclusion for income of members of the West Virginia National Guard or reserve forces who are called to active duty for Operation Enduring Freedom or domestic security duty.

VALUE: **Cannot be determined**

Rationale

This expenditure exists to recognize the services of reserve military personnel who are called to active duty for Operation Enduring Freedom or for domestic security duty as a result of a call out pursuant to an Executive Order of the President of the United States.

Revenue Analysis

The revenue loss associated with this decreasing modification cannot be determined. The loss of revenue in any given year depends on the number of military personnel called to active duty and the length of time spent on active duty.

DECREASING MODIFICATION FOR ACTIVE DUTY MILITARY SEPARATION

STATUTE: W. Va. Code §11-21-12e

EXCLUSION: Exclusion for active duty military income earned by military personnel who claim West Virginia as the individuals' State of residence if individual was on active duty for at least 30 continuous days and has separated from active military service.

VALUE: **$170,000 per year**

Rationale

This expenditure exists to presumably to encourage military personnel to live in West Virginia following separation from the military.

DECREASING MODIFICATION FOR AMOUNTS EXPENDED FOR TOLLS

STATUTE: W. Va. Code §11-21-12h

EXCLUSION: Amount of not less than $25 and not more than $1,200 of any payment for amounts expended for tolls paid electronically through use of a West Virginia Parkways, Economic Development and Tourism Authority PAC card (Parkways Authority Commuter Card) for non-commercial passes for travel on toll roads in West Virginia for taxable years beginning on and after January 1, 2007.

VALUE: **$50,000 per year**

Rationale

This expenditure exists to help Taxpayers who regularly travel the West Virginia Turnpike to commute to work.

Revenue Analysis

In addition to providing the decreasing modification for Taxpayers, W. Va. Code §11-21-12h requires the State Tax Commissioner to annually certify to the West Virginia Parkways Economic Development and Tourism Authority: (i) the total dollar amount of tolls deducted by individuals under this section on Personal Income Tax returns filed for the preceding taxable year beginning with tax year 2007; and (ii) the total dollar amount of Personal Income Tax revenue not collected through the date of such certification solely as a result of such total toll deductions for such taxable year.

The Statute also requires the West Virginia Parkways Economic Development and Tourism Authority to pay to the State Tax Commissioner[1] an amount equal to the certified amount of Personal Income Tax not collected due to the toll modification. The payment is made solely from non-toll revenues.

Effective in late 2018, the West Virginia Parkways Authority began offering a transponder for unlimited travel for $25 a year. Since the plan pays for itself after one round trip across the West Virginia Turnpike, most users, whether frequent or infrequent, have opted for this plan. Since the amount of the toll charges that can be taken for this modification must be over $25, the change to this plan should reduce the revenue loss to minimal.

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[1] The payment to the State Tax Commissioner is deposited into the Personal Income Tax account of the General Revenue Fund.

DECREASING MODIFICATION FOR CONTRIBUTIONS TO PRIVATE AUTISM TRUST FUNDS

STATUTE: W. Va. Code §11-21-12i

EXCLUSION: Contributions to a qualified trust maintained for the benefit of a child with autism by the parent or guardian of a child with autism to the extent the amount is not allowable as a deduction when arriving at federal adjusted gross income.

VALUE: **Minimal**

Rationale

This expenditure exists to encourage savings for future expenses for an autistic child.

ITEMIZED DEDUCTIONS FOR FIDUCIARIES

STATUTE: W. Va. Code §11-21-18

DEDUCTION: Itemized deductions claimed prior to attainment of taxable income for the fiduciary.

VALUE: **$100,000 per year**

Rationale

Although the State does not permit federal itemized deductions for Personal Income Tax, West Virginia allows these deductions for the Fiduciary Income Tax. Current calculations of State tax liability for fiduciaries begin with federal taxable income, not federal adjusted gross income. Therefore, fiduciaries are essentially allowed to claim itemized deductions. This simplifies the filing requirements for these Taxpayers.

PENSION EXCLUSIONS

Due to the similarities in West Virginia's tax treatment of retirement benefits for government retirees, these exclusions have been grouped together for purposes of this study. Currently, most pension plan contributions are tax-deferred under both federal and West Virginia tax laws. A pension income exclusion changes tax-deferred income into tax-exempt income.

MILITARY RETIREMENT BENEFITS

STATUTE: W. Va. Code §11-21-12(c)(5)

EXCLUSION: The first $2,000 of benefits received from military retirement.

VALUE: **$1.0 million per year**

Rationale

Due to the United States Supreme Court ruling in Davis v. Michigan, 489 U.S. 803 (1989), this partial exclusion is necessary because a similar exclusion is allowed for State government retirement benefits.

Revenue Analysis

Taxpayers who are at least 65 years old or totally and permanently disabled may currently take a $2,000 decreasing modification for military retirement benefits and a $6,000 modification for senior citizens. Without the decreasing modification for military retirement pay, these Taxpayers would be eligible for the full $8,000 senior citizen exclusion.

FEDERAL RETIREMENT SYSTEM BENEFITS

STATUTE: W. Va. Code §11-21-12(c)(5)

EXCLUSION: The first $2,000 of benefits received from any federal retirement system.

VALUE: **$1.8 million per year**

Rationale

Due to the United States Supreme Court ruling in Davis v. Michigan, 489 U.S. 803 (1989), this partial exclusion is necessary because a similar exclusion is allowed for State government retirement benefits.

Revenue Analysis

Taxpayers who are at least 65 years old or totally and permanently disabled may currently take a $2,000 decreasing modification for any federal retirement benefits and a $6,000 modification for senior citizens. Without the decreasing modification for federal retirement benefits, these Taxpayers would be eligible for the full $8,000 senior citizen exclusion.

WEST VIRGINIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM BENEFITS

STATUTE: W. Va. Code §11-21-12(c)(5)

EXCLUSION: The first $2,000 of benefits received from the West Virginia Public Employees' Retirement System.

VALUE: **$2.1 million per year**

Rationale

This exclusion is a benefit for West Virginia Public Employees' Retirement System participants.

Revenue Analysis

Taxpayers who are at least 65 years old or totally and permanently disabled may currently take a $2,000 decreasing modification for Public Employees' Retirement System benefits and a $6,000 modification for senior citizens. Without the decreasing modification for benefits from the West Virginia Public Employees' Retirement System, these Taxpayers would be eligible for the full $8,000 senior citizen exclusion.

WEST VIRGINIA TEACHERS' RETIREMENT SYSTEM BENEFITS

STATUTE: W. Va. Code §11-21-12(c)(5)

EXCLUSION: The first $2,000 of benefits received from the West Virginia Teachers' Retirement System.

VALUE: **$3.3 million per year**

Rationale

This modification exists as a benefit for West Virginia Teachers' Retirement System participants.

Revenue Analysis

Taxpayers who are at least 65 years old or totally and permanently disabled may currently take a $2,000 decreasing modification for Teachers' Retirement System benefits and a $6,000 modification for senior citizens. Without the decreasing modification for benefits from the West Virginia Teachers' Retirement System, these Taxpayers would be eligible for the full $8,000 senior citizen exclusion.

STATE OR LOCAL POLICE OR FIREFIGHTERS' OR DEPUTY SHERIFFS' RETIREMENT SYSTEM BENEFITS

STATUTE: W. Va. Code §11-21-12(c)(6)

EXCLUSION: All benefits received under the West Virginia Department of Public Safety Death, Disability and Retirement Fund or retirement income received in the form of pensions or annuities from any West Virginia police or firemen's retirement system after December 31, 1979.

VALUE: **$6.0 million per year**

Rationale

All benefits received from any West Virginia State or local police or firefighters' retirement system are excluded from Personal Income Tax. These retirees usually are not eligible for Social Security benefits relating to their service as firefighters or police officers. Most other public sector retirees (State, federal and military) are eligible for Social Security retirement benefits.

Revenue Analysis

As a portion of total value, 67 percent of this exclusion is attributable to retirees from State or local police departments. The remaining 33 percent is attributable to retirees from municipal fire departments.

Some of these Taxpayers are senior citizens. If no decreasing modification existed for benefits from State or local police or firefighters' retirement plans, these Taxpayers would be eligible for the $8,000 decreasing modification for Taxpayers over age 65 or totally and permanently disabled.

ADDITIONAL MILITARY RETIREMENT EXCLUSION

STATUTE: W. Va. Code §11-21-12(c)(7)

EXCLUSION: Additional military pension exclusion of up to $20,000.

VALUE: **$8.1 million per year**

Rationale

This modification exists as a benefit for military retirees.

Revenue Analysis

Effective with the 2019 tax year, this modification increases to a full exclusion so the revenue loss in future years will increase.

RAILROAD RETIREMENT BENEFITS

STATUTE: W. Va. Code §11-21-12(c)(11)

EXCLUSION: Railroad Retirement benefits paid by the United States Railroad Retirement Board.

VALUE: **$3.9 million per year**

Rationale

Tier I and Tier II Railroad Retirement benefits included in federal adjusted gross income are excluded from State Personal Income Tax.[1] Taxation of Tier I benefits by states is prohibited under federal law. All or part of Tier I Railroad Retirement benefits may be excluded in computing federal adjusted gross income, the starting point for West Virginia Personal Income Tax computation. The amount excluded on the federal income tax return is based on the Taxpayer's combined income over a specified base amount. The value of the State exclusion includes only those benefits that are taxable under federal income tax statutes

Revenue Analysis

The full exclusion for Railroad Retirement benefits is not subject to the same restrictions as benefits from federal, State, and local government retirement systems. Benefits claimed for government retirement systems (e.g., $2,000 exclusion for military retirement) reduce the maximum amount allowed for the senior citizens exclusion. For example, if a Taxpayer claims a $2,000 exclusion for federal retirement benefits, the maximum amount of other income which can be excluded is $6,000. The same is not true for Railroad Retirement benefits. These retirees may take a full exclusion for earned Railroad Retirement benefits and then take an exclusion of up to $8,000 of other income, if the Taxpayer is at least 65 years old or is totally and permanently disabled.

[1] A portion of a Taxpayer's Tier I Railroad Retirement benefits may be taxable for federal income tax purposes and therefore included in federal adjusted gross income. The amount of benefits that are taxable is based on the Taxpayer's combined income over a specified base amount. The base amount is one of the following:

1. $32,000 for married Taxpayers filing jointly;
2. $0 for married Taxpayers filing separately; or
3. $25,000 for all other Taxpayers.

FEDERALLY MANDATED EXCLUSION

The federal exclusion for interest income from United States obligations for Personal Income Tax purposes is **not** a tax expenditure because it is excluded from State taxation by federal law.

For this report, this exclusion is considered a basic part of the Personal Income Tax structure because State lawmakers have no authority to tax such income. Values for this exclusion are given although additional revenue would not be realized through Legislative action due to federal prohibitions for taxing these obligations.

INTEREST INCOME FROM UNITED STATES OBLIGATIONS FOR PERSONAL INCOME TAX PURPOSES

STATUTES: W. Va. Code §§11-21-12(c)(1)

EXCLUSION: Interest Income on obligations of the United States.

VALUE: **$2.2 million per year**

INTEREST INCOME FROM UNITED STATES OBLIGATIONS FOR FIDUCIARY INCOME TAX PURPOSES

STATUTES: W. Va. Code §§11-21-19

EXCLUSION: Interest Income on obligations of the United States.

VALUE: **$370,000 per year**

CREDITS

W. Va. Code provides for the application of various tax credits against the Personal Income Tax. Some credits provide qualifying businesses or business shareholders with an investment incentive while others provide relief from double taxation. These tax credits are listed below.

ECONOMIC DEVELOPMENT TAX CREDITS

- Economic Opportunity Tax Credits

CREDITS TO PREVENT DOUBLE TAXATION

- Credit for Personal Income Taxes Paid to Other States

EMPLOYMENT TAX CREDITS

- Apprenticeship Training Credit
- Military Incentive Tax Credit

CREDITS THAT AID LOW-INCOME FAMILIES

- Senior Citizens Credit for Property Taxes Paid
- Family Tax Credit
- Excess Property Tax Credit

MISCELLANEOUS TAX CREDITS

- Neighborhood Investment Program Credit
- Environmental Agricultural Equipment Tax Credit
- Historic Rehabilitated Buildings Investment Credit
- Qualified Rehabilitated Residential Building Investment Credit
- Nonfamily Adoption Credit
- Conceal Carry Gun Permit Credit
- Farm to Food Bank Tax Credit

EXPIRED AND TERMINATED TAX CREDITS

- Alternative-Fuel Tax Credits
- Film Industry Investment Credit

Many of the credits listed above may also be applied against other business taxes. Expenditure values presented in this section represent the amounts applied against only Personal Income Tax. Often, the credit claimed against the Personal Income Tax has been reduced by the application of the credit against other taxes according to the priority order specified by statute or regulations. Thus, the credit amounts claimed against Personal Income Tax may be negligible compared to the total cost of the credit taken against all taxes. An analysis of these expenditures follows.

ECONOMIC DEVELOPMENT TAX CREDITS

Economic Development Tax Credits exist to promote business expansion in the State. Such credits require either creation of employment or capital outlays for certain qualified investments to qualify.

ECONOMIC OPPORTUNITY TAX CREDITS

STATUTE: W. Va. Code §11-13Q

CREDIT: The Economic Opportunity Tax credit is available to qualified businesses that make a qualified investment in a new or expanded business in West Virginia

VALUE: **Cannot be disclosed**[1]

Rationale

The Economic Opportunity Tax Credits are incentives designed to promote job creation through capital investment. The Economic Opportunity Tax Credit is generally a capital investment tax credit pro-rated over a 10-year period for businesses engaged in the activities of manufacturing, information processing, warehousing, goods distribution exclusive of retail, destination-oriented recreation and tourism, research and development and the relocation of a corporate headquarters. The share of qualified capital investment subject to tax credit is based on the number of new jobs created as the result of the additional capital investment. The share of total payroll represented by the new employees determines the share of total tax liability offset by tax credit. A minimum number of new jobs must be created and maintained to gain entitlement to tax credit benefits.

[1] Due to Taxpayer confidentiality.

CREDITS TO PREVENT DOUBLE TAXATION

The following credit exists to eliminate the possibility of double taxation for income taxes paid to other states.

CREDIT FOR PERSONAL AND FIDUCIARY INCOME TAXES PAID TO OTHER STATES

STATUTES: W. Va. Code §§11-21-20 and 11-21-40

CREDIT: These credits generally exist to eliminate the possibility of double taxation of same increase by two or more states.

VALUE: **$20.4 million per year**

Rationale

The intent for these credits is simply to provide a mechanism for the return of funds never due to the State. Therefore, these credits are **not** tax expenditures.

EMPLOYMENT TAX CREDITS

Employment Tax Credits generally exist to encourage employee training and the hiring of certain individuals, such as qualified unemployed veterans or other military personnel.

APPRENTICESHIP TRAINING TAX CREDIT

STATUTE: W. Va. Code §11-13W

CREDIT: The Apprenticeship Training Tax Credit is available to taxpayers for wages paid to apprentices in construction trade.

VALUE: **$200,000 per year**

Rationale

The Apprenticeship Training Tax Credit provides qualified construction trade employers with a $2 per hour tax credit for the training of an apprentice up to a maximum of $2,000 per year or 50 percent of wages paid to such person, whichever is less. The tax credit may provide some incentive for additional training of apprentices.

MILITARY INCENTIVE TAX CREDIT

STATUTE: W. Va. Code §11-21-42

CREDIT: Military Incentive Tax Credit promotes the hiring of veterans and National Guard members.

VALUE: **Cannot be disclosed**[1]

Rationale

The Military Incentive Tax Credit provides employers who hire a qualified unemployed member of the West Virginia National Guard and reserve forces or unemployed disabled veteran with a one-time employment tax credit generally equal to either 25 percent of up to the first $5,000 in wages paid during the year or the disability percentage multiplied by the first $5,000 of wages paid a qualified disabled veteran. The program is administered by Work Force West Virginia.

[1] Due to Taxpayer confidentiality

CREDITS THAT AID LOW-INCOME FAMILIES

Three tax credits exist to aid low-income families, senior citizens, and those who are permanently and totally disabled.

SENIOR CITIZENS CREDIT FOR PROPERTY TAX PAID

STATUTE: W. Va. Code §11-21-21

CREDIT: Provides eligible lower income recipients of Homestead Property Tax Exemption with additional tax relief through a refundable State tax credit related to local property tax paid.

VALUE: **$11.7 million per year**

Rationale

The refundable personal income tax credit for residential real estate property taxes paid on the first $20,000 of taxable valuation exists to provide moderate to lower income homestead exemption beneficiaries with additional relief from local real property taxes paid on their owner-occupied homes. This provision benefits qualified senior citizens and qualified permanently and totally disabled residents with an average net property tax savings of an additional $200 above local tax savings associated with both the $20,000 homestead tax exemption and Class II property tax rate preference.

FAMILY TAX CREDIT

STATUTE: W. Va. Code §11-21-22

CREDIT: To eliminate West Virginia Personal Income Tax on families with incomes below federal poverty guidelines.

VALUE: **$20.0 million per year**

Rationale

The Family Tax Credit exists to provide total state income tax relief to families with income at or below the federal poverty guideline based on family size. Program cost is minimized via a tax credit phase-out mechanism for those with incomes slightly above the federal poverty guideline.

EXCESS PROPERTY TAX CREDIT

STATUTE: W. Va. Code §11-21-23

CREDIT: Refundable credit for real property taxes paid in excess of 4 percent of gross household income.

VALUE: **$2.5 million per year**

Rationale

The refundable personal income tax credit for residential real estate property taxes paid in excess of an amount equal to 4 percent of federal adjusted gross income exists to provide qualified moderate to lower income homeowners with additional property tax relief in cases where annual taxes paid on the owner occupied residence exceeds an amount equal to 4 percent of the homeowner's annual federal adjusted gross income as reported on the State personal income tax return.

MISCELLANEOUS TAX CREDITS

Miscellaneous Tax Credits exist to incentivize investments in a variety of activities, such as increasing charitable contributions, purchases of environmentally friendly agricultural equipment, and rehabilitating certain properties.

NEIGHBORHOOD INVESTMENT PROGRAM CREDIT

STATUTE: W. Va. Code §11-13J

CREDIT: The Neighborhood Investment Program Credit provides qualified Taxpayers with a tax credit equal to 50 percent of charitable contributions made to an approved organization.

VALUE: **$2.6 million per year**

Rationale

The Neighborhood Investment Program Credit provides qualified contributing Taxpayers with a tax credit equal to 50 percent of charitable contributions made to an approved organization that received project approval along with an allotment of tax credits from the West Virginia Development Office based on recommendations from a neighborhood investment advisory board. The Taxpayer may use credits received from a qualifying organization to offset up to 50 percent of Personal Income Tax liability. The minimum contribution for purposes of the tax credit is $500 per year and the maximum contribution is $200,000 per year. Excess tax credits may be carried forward for a period of up to four additional years. The total maximum amount of tax credit allocated by the State in any given year is limited to $3 million. The Program may stimulate additional giving for tax credit eligible charitable projects.

ENVIRONMENTAL AGRICULTURAL EQUIPMENT TAX CREDIT

STATUTE: W. Va. Code §11-13K

CREDIT: The Environmental Agricultural Equipment Tax Credit provides eligible Taxpayers with an incentive to purchase certain types of “environmentally friendly” agricultural equipment.

VALUE: **Minimal**

Rationale

The Environmental Agricultural Equipment Tax Credit provides eligible Taxpayers with an incentive to purchase certain types of “environmentally friendly” agricultural equipment. The tax credit equals 25 percent of the purchase price of qualified machinery up to a maximum of $2,500 for purchases in a single year with a maximum carryover period of five years.

HISTORIC REHABILITATED BUILDINGS INVESTMENT CREDIT

STATUTE: W. Va. Code §11-21-8a

CREDIT: The Historic Rehabilitated Buildings Investment Credit is available to qualified rehabilitated building projects located in West Virginia that also qualify for the 20 percent federal historic rehabilitation tax credit.

VALUE: **$300,000 per year**[1]

Rationale

The Historic Rehabilitated Buildings Investment Credit is available to qualified rehabilitated building projects located in West Virginia that also qualify for the 20 percent federal historic rehabilitation tax credit. Prior to January 1, 2018, the State tax credit equaled 10 percent of qualified expenditures for historic rehabilitation as approved by the West Virginia Division of Culture and History and designated by the National Park Service as a "certified historic structure." Effective January 1, 2018, the State tax credit is equal to 25 percent of the qualified expenditures. The West Virginia tax credit is transferable to other Taxpayers. The tax credit was intended to promote historic building rehabilitation.

QUALIFIED REHABILITATED RESIDENTIAL BUILDING INVESTMENT CREDIT

STATUTE: W. Va. Code §11-21-8g

CREDIT: The Qualified Rehabilitated Residential Building Investment Credit is available to qualified owner-occupied rehabilitated residential building projects located in West Virginia.

VALUE: **$100,000 per year**[1]

Rationale

The Qualified Rehabilitated Residential Building Investment Credit is available to owner-occupied qualified rehabilitated building projects located in West Virginia. The State tax credit equals 5 percent of qualified expenditures for historic rehabilitation as approved by the West Virginia Division of Culture and History and designated by the National Park Service as a "certified historic structure." The West Virginia tax credit is transferable to other Taxpayers. The tax credit was intended to promote historic building rehabilitation.

[1] This is an average value due to variation in claims year-to-year.

NONFAMILY ADOPTION CREDIT

STATUTE: W. Va. Code §11-21-10a

CREDIT: A one-time credit against the tax imposed by the provisions of this article for adoption of a child.

VALUE: **$2.0 million per year**

Rationale

The credit is equal to $4,000 for each nonfamily child who is under the age of 18 years at the time of adoption. For the purpose of this credit, nonfamily adoption means adoption of a child or children by a taxpayer or taxpayers who are not the father, mother, or stepparent of the child. Credit may be claimed in year of adoption or over a period of up to three years at the option of the Taxpayer. It is designed to encourage adoption of children.

CONCEAL CARRY GUN PERMIT CREDIT

STATUTE: W. Va. Code §61-7-4(r)

CREDIT: A one-time credit of up to $50 for the successful completion of a safety course or the fees associated with the initial application of a license to carry a concealed weapon.

VALUE: **$60,000 per year**

Rationale

A credit is allowed against West Virginia Personal Income Tax for the costs incurred during the taxable year for training courses or classes taken by the primary taxpayer and/or spouse for the purposes of applying for and qualifying for a permit to carry a concealed weapon in this state. This is a one-time credit limited to the lesser of actual costs or the maximum amount of credit allowable with respect to any taxpayer and/or spouse not to exceed $50 per taxpayer. The credits are not allowed with respect to any person who fails to qualify or is denied a permit after applying for the permit.

FARM TO FOOD BANK TAX CREDIT

STATUTE: W. Va. Code §§11-13DD

CREDIT: The credit is equal to 10 percent of the value of the donated edible agricultural products.

VALUE: **Minimal**

Rationale

A tax credit is available to farmers who make donations of edible agricultural products to one or more nonprofit food programs in West Virginia. The credit is equal to 10 percent of the value of the donated edible agricultural products, not to exceed $2,500 during a taxable year. Any credit remaining after application against the taxpayer's tax liabilities for the current year may be carried forward to the next four taxable years. No more than $200,000 of tax credits may be allocated in any fiscal year. Tax credits are allocated in the order in which the donation forms are received.

The purpose of the credit is to promote fresh, healthy and local agricultural products for food banks and to provide an incentive for farmers to donate to food banks in this state.

EXPIRED AND TERMINATED CREDITS

Tax credits are not always available in perpetuity. Some credits include an expiration date when the statute is enacted. Others are terminated for a variety of reasons. Some programs contain internal expiration dates and others are terminated through enacted legislation.

ALTERNATIVE-FUEL TAX CREDITS

STATUTE: W. Va. Code §11-6D

CREDIT: The Alternative-Fuel Tax Credit program includes two separate tax credits for: (1) the purchase of a qualified alternative fuel vehicle and (2) the development of alternative fueling infrastructure.

VALUE: This credit varies by year due to statutory modifications:

Tax Year`	Amount Claimed in Millions	Number of Filers
2011	$15.6	3,883
2012	$33.0	9,522
2013	$18.7	7,157
2014	$ 6.0	3,145
2015	$ 2.0	1,582
2016	$ 0.6	660
2017	$ 0.1	131

Rationale

The Alternative-Fuel Tax Credit program provides tax incentives for the purchase of qualified alternative-fuel motor vehicles and the development of alternative fueling infrastructure. The vehicle tax credit is either 35 percent of the purchase cost or 50 percent of the conversion cost up to a maximum of $7,500 for a qualified alternative-fuel vehicle. The maximum tax credit is a higher $25,000 if the qualified vehicle weighs more than 26,000 pounds. The commercial infrastructure tax credit is 20 percent of the construction or installation costs for a fueling center up to a maximum of $400,000 per facility.

This tax credit statute was originally a component part of a comprehensive horizontal well natural gas regulatory bill and included electric and hybrid vehicles and those that operated using hydrogen or a fuel mixture of at least 85 percent alcohols by volume. The tax credit program was modified in 2013 to generally apply only to natural gas vehicles and natural gas fueling infrastructure. Other types of alternative-fuel capable vehicles were already in plentiful supply prior to the enactment of this tax incentive program in 2011. This program was terminated on December 31, 2017.

FILM INDUSTRY INVESTMENT TAX CREDIT

STATUTE: W. Va. Code §11-13X

CREDIT: The Film Industry Incentive Tax Credit promotes film or audiovisual projects in West Virginia.

VALUE: **Cannot be disclosed[1]**

Rationale

The Film Industry Investment Tax Credit is an incentive designed to promote the film industry in West Virginia through partial reimbursement of qualified film expenditures through marketable tax credits. The Film Industry Investment Tax Credit was terminated effective July 1, 2018. One probable reason for the repeal was the fact that most of the credits were taken for filming commercials, not movies.

No new Film Tax credits can be authorized after July 1, 2018. Film Tax credits issued prior to that date can be claimed through the second taxable year after the taxable year in which the expenditure occurred.

[1] Due to taxpayer confidentiality.