WEST VIRGINIA CODE: §11-21-12I

§11-21-12i. Decreasing modification reducing federal adjusted gross income for qualifying contribution to a qualified trust maintained for the benefit of a child with autism; effective date; sunset date.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized in the amount of any qualifying contribution to a qualified trust maintained for the benefit of a child with autism by the parent or guardian of a child with autism, up to a maximum of $1,000 per year for individual filers and persons who are married but filing separately, and $2,000 per year for persons who are married and filing jointly, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed. The taxpayer may elect to carry forward the modification over a period not to exceed four tax years, beginning in the tax year in which the payment was made: *Provided*, That the amount of the decreasing modification, in combination with all other decreasing modifications authorized pursuant to this article, shall in no event reduce taxable income below zero. Any unused decreasing modification carryforward amount remaining after the four-year carryforward period is forfeited. The accrued deposits and earnings on the qualified trust account for a child with autism and the subsequent withdrawal of funds from that trust account, made in accordance with the provisions of §44-16-1 *et seq*. of this code, shall not be treated as taxable income to either the trust or the beneficiary. The provisions of this section are effective for taxable years beginning on and after January 1, 2011.

(b) The following definitions apply to this section:

(1) "Autism" means "autism" as that term is defined in §44-16-1 *et seq*. of this code.

(2) "Child with autism" means "child with autism" as that term is defined in §44-16-1 *et seq*. of this code.

(3) "Guardian" means "guardian" as that term is defined in §44-16-1 *et seq*. of this code.

(4) "Parent" means a "parent" as that term is defined in §44-16-1 *et seq*. of this code.

(5) "Qualified trust for a child with autism" means "qualified trust for a child with autism" as that term is defined in §44-16-1 *et seq*. of this code.

(c) If it appears upon audit or otherwise that any person or entity has taken the decreasing modification allowed under this section and was not entitled to take the decreasing modification, or has withdrawn funds from the qualified trust for a child with autism in a way not consistent with the requirements of §44-16-1 *et seq*. of this code, then an assessment

WV Legislature

shall be made and the income tax liability of the taxpayer shall be recomputed disallowing the decreasing modification so taken. Such assessment shall not be barred by any statute of limitations otherwise applicable to the tax imposed pursuant to this article. Amended returns shall be filed for any tax year for which the decreasing modification was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in §11-10-17 and such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-10-1 *et seq*. of this code.

(d) Married parents who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section in an amount equal to the amount of contributions made by the parents into the trusts, not to exceed $1,000 each.

(e) Joint guardians who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section, in an amount equal to the amount of contributions made by the guardians into the trust, not to exceed $1,000 each.

(f) In the event the parents or guardians of a child with autism, claiming the modification provided under this section, become divorced or legally separated, each party shall be allowed to claim the amount of unused carryforward modification that remains available under this section according to the terms of an agreed property settlement approved by the divorce court which specifically addresses the unused carryforward modification. In the event that no property settlement specifically addressing the unused carryforward modification exists relating to the divorce or legal separation, then any unused carryforward modification remaining at the time of the divorce or legal separation is granted shall be evenly divided between the parties.

(g) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section, all in accordance with the provisions of §29A-3-1 *et seq*. of this code.

(h) The provisions of this section shall sunset, expire, and be of no force and effect for all tax periods beginning on and after January 1, 2027: *Provided*, That qualifying contributions to qualified trusts made on or prior to December 31, 2026, by fulfillment of the requirements of §44-16-2 of this code shall qualify for the decreasing modification and carryforward provisions established by this article.

WV Legislature