

# WEST VIRGINIA CODE: §11-21-20

## §11-21-20. Credit for income tax of another state.

(a) General. — A resident shall be allowed a credit against the tax otherwise due under this article for any income tax paid to another state of the United States or by the District of Columbia for the taxable year, either directly paid by the individual or paid by a pass-through entity in accordance with §11-21-3a of this code and passed through by the entity to the individual taxpayer, upon income both derived therefrom and subject to tax under this article. As used in this subsection, "pass-through entity tax" refers to a state net income tax imposed by another state on a pass-through entity that is substantially similar to the tax imposed by §11-21-3a of this code. Solely for purposes of this section, an owner of a pass-through entity shall be considered liable for tax paid to another state by the pass-through entity pursuant to a pass-through entity tax imposed by the state (whether elected or otherwise) in an amount equal to that portion of the pass-through entity tax representing the owner's share of the pass-through entity's income subject to the tax, and the owner shall be considered to have paid that portion of the tax paid by the pass-through entity. The owner of a pass-through entity shall also be considered liable for and to have paid state income taxes to another state paid by the pass-through entity on behalf of an owner through withholding, a composite return, or otherwise. If an owner receives a refund or credit for overpayment of all or part of a pass-through entity tax imposed by another state, the amount paid by the owner shall be reduced by the refund or credit.

(b) Limitations. — (1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by such other jurisdiction by the total amount of the taxpayer's West Virginia income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's West Virginia income.

(c) Exception. — No credit shall be allowed under this section for a tax of a jurisdiction which allows residents of this state a credit against the taxes imposed by such other jurisdiction for the tax under this article, if such other credit is substantially similar to the credit granted by §11-21-40 of this code.

(d) Definition. — For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual;

(2) The amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his or her West Virginia adjusted gross income under §11-21-12 of this code; or

(3) The taxable income of an electing pass-through entity for which election is made and determined in accordance with §11-21-3a of this code.

(e) Effective date. — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022.

WV Legislature