WEST VIRGINIA CODE: §11-21-30

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

(a) Computation of tax. — For taxable years beginning after December 31, 1991, the tax due under this article on taxable income derived from sources in this state by a nonresident individual, estate, or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq*. of this code) or by a part-year resident individual shall be calculated as provided in this section.

(1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an individual, estate or trust, were a resident of this state for the entire taxable year. When determining tentative tax liability under this subdivision, a nonresident shall be allowed the same deductions, exemptions and credits that would be allowable if taxpayer were a resident individual, estate or trust, as the case may be, for the entire taxable year, except that no credit shall be allowed under section twenty of this article §11-21-20 of this code.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer's "federal adjusted gross income" for the taxable year as defined in section nine of this article §11-21-9 of this code: *Provided*, That if this computation produces a result that is out of all appropriate proportion to the amount of taxpayer's West Virginia source income, the Tax Commissioner may provide such equitable relief as the Tax Commissioner, in his or her discretion, considers to be appropriate under the circumstances.

(b) Special rules for estates and trusts. — For purposes of subdivision (1), subsection (a) of this section:

(1) The "federal adjusted gross income" of an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq*. of this code) shall be determined as if such estate or trust were an individual; and

(2) In the case of a trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq*. of this code), "federal adjusted gross income" shall be its "federal adjusted gross income" for the taxable year increased by the amount of any includable gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to Section 644 of the Internal Revenue Code.

(3) When an electing small business trust as defined in Section 1361(e)(1) of the Internal Revenue Code of 1986, as amended, is a shareholder in one or more electing small business

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corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641(c) of that code the Internal Revenue Code of 1986 shall be included in West Virginia taxable income of the trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq*. of this code).

(c) Special rules for part-year residents. —

(1) For purposes of subdivision (1), subsection (a) of this section, the "federal adjusted gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income for the taxable year, as defined in section nine of this article §11-21-9 of this code, increased or decreased, as the case may be, by the items accrued under subdivision (1), subsection (b), section forty-four of this article §11-21-44(b)(1) of this code, to the extent such items are not otherwise included in federal adjusted gross income for the taxable year, and decreased or increased, as the case may be by the items accrued under subdivision (2) of said subsection §11-21-44(b)(2) of this code, to the extent such items are included in federal adjusted gross income for the taxable year; and

(2) In computing the tax due as if taxpayer were a resident of this state for the entire tax year, West Virginia adjusted gross income shall include the accruals specified in subdivision (1) of this subsection, with the applicable modifications described in section forty-four of this article §11-21-44 of this code.

(d) Definitions. —

(1) "Nonresident estate" means an estate of a decedent who was not a resident of this state at the time of his or her death.

(2) "Nonresident trust" means a trust which is not a resident trust, as defined in section seven of this article §11-21-7 of this code.

(3) "Part-year resident individual" means an individual who is not a resident or nonresident of this state for the entire taxable year.

(e) Effective date. — (1) The provisions of this section shall apply to taxable years beginning after December 31, 1991. As to taxable years beginning prior to that date, the provisions of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

(2) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

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