

WEST VIRGINIA CODE: §11-21-32

§11-21-32. West Virginia source income of nonresident individual.

(a) General. -- The West Virginia source income of a nonresident individual shall be the sum of the net amount of income, gain, loss and deduction entering into his or her federal adjusted gross income, as defined in the laws of the United States and section nine of this article, for the taxable year, derived from or connected with West Virginia sources, including:

- (1) His or her distributive share of partnership income, gain, loss and deduction, determined under section thirty-seven; and
- (2) His or her pro rata share of S corporation income, loss and deduction, determined under section thirty-seven of this article, increased by reductions for taxes described in paragraphs (2) and (3), subsection (f), section 1366 of the Internal Revenue Code; and
- (3) His or her share of estate or trust income, gain, loss and deduction, determined under section thirty-nine of this article.

(b) Income and deductions from West Virginia sources.

(1) Items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be those items attributable to:

- (A) The ownership of any interest in real or tangible personal property in this state; or
- (B) A business, trade, profession or occupation carried on in this state; or
- (C) In the case of a shareholder of an S corporation, the ownership of shares issued by such corporation, to the extent determined under section thirty-seven; or
- (D) Prizes awarded under article twenty-two, chapter twenty-nine of this code by the West Virginia State Lottery Commission.

(2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from West Virginia sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state.

(3) Deductions with respect to capital losses and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with West Virginia sources, under regulations of the Tax Commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(4) The deduction allowed by section 215 of the Internal Revenue Code, relating to alimony, shall not constitute a deduction derived from West Virginia sources.

(c) Income and deductions partly from West Virginia sources. -- If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the Tax Commissioner, the items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be determined by apportionment and allocation under such regulations.

(d) Purchase and sale for own account. -- A nonresident, other than a dealer holding property for sale to customers in the ordinary course of his or her trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property for his or her own account.

(e) Husband and wife. -- If a husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia source incomes separately as if their federal adjusted gross incomes had been determined separately.

(f) Effective date. -- This section as amended and reenacted in the year 1992 shall apply to taxable years beginning after December 31, 1991. As to prior taxable years, the provisions of this section and of section thirty-one of this article, as then in effect, are fully and completely preserved.