WEST VIRGINIA CODE: §11-21-37

§11-21-37. Nonresident partners and shareholders of S corporations.

(a) Portion derived from West Virginia sources. --

(1) In determining the West Virginia source income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with West Virginia sources of such partner's distributive share, for federal income tax purposes, of items of partnership income, gain, loss and deduction, as such portion shall be determined under regulations of the Tax Commissioner consistent with the applicable rules of section thirty-two.

(2) In determining West Virginia source income of a nonresident shareholder of an S corporation, there shall be included only the portion derived from or connected with West Virginia sources of such shareholder's pro rata share of items of S corporation income, gain, loss and deduction entering into the shareholder's federal adjusted gross income, as defined in section nine, increased by reductions for taxes described in paragraphs (2) and (3), subsection (f), section 1366 of the Internal Revenue Code, as such portion shall be determined under regulations of the Tax Commissioner consistent with the applicable methods and rules for allocation under article twenty-four of this chapter.

(b) Special rules as to West Virginia sources. -- In determining the sources of a nonresident partner's income, no effect shall be given to a provision of the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital; or

(2) Allocates to the partner, as income or gain from sources outside West Virginia, a greater proportion of his or her distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside West Virginia to partnership income or gain from all sources, except as authorized in subsection (d); or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with West Virginia sources than his or her proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (c).

(c) Alternative methods. -- The Tax Commissioner may, on written application filed on or before the due date of the partner's or S corporation shareholder's return under this article for that taxable year determined without regard to any extension of time for filing, authorize the use of such other method or methods of determining the nonresident partner's portion of partnership items, or the nonresident S corporation shareholder's portion of S corporation items, derived from or connected with West Virginia sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as the

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commissioner may require.

(d) Application of rules for resident partners to nonresident partners and shareholders.

(1) For a partner's distributive share of items, see subsection (a) of section seventeen of this article.

(2) The character of partnership items for a nonresident partner shall be determined under subsection (b) of section seventeen of this article.

(3) The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (b) of this section, having the principal purpose of avoidance or evasion of tax under this article shall be determined under subsection (c) of section seventeen of this article.

(e) Application of rules for resident S corporation shareholders to nonresident S corporation shareholders.

(1) For an S corporation shareholder's distributive share of S corporation items, see subsection (a) of section seventeen-a of this article.

(2) The character of S corporation items for a nonresident shareholder of an S corporation shall be determined under subsection (b) of section seventeen-a of this article.

(f) Effective date. -- The amendments to this section enacted in the year 1992 shall apply to taxable years beginning after December 31, 1992. As to prior taxable years the provisions of this section and of section thirty-seven-a of this article, as then in effect, are fully and completely preserved.

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