WEST VIRGINIA CODE: §11-21-39

§11-21-39. Share of nonresident estate, trust or beneficiary in income from West Virginia sources.

(a) General. -- The share of a nonresident estate or trust under paragraph (1) of subsection (a) of section thirty-eight, and the share of a nonresident beneficiary of any estate or trust under subsection (a) of section thirty-two of this article, in estate or trust income, gain, loss and deduction from West Virginia sources shall be determined as follows:

(1) Items of distributable net income from West Virginia sources. -- There shall be determined the items of income, gain, loss and deduction, derived from or connected with West Virginia sources, which would be included in the determination of federal adjusted gross income if the estate or trust were an individual and which enter into the definition of federal distributable net income of the estate or trust for the taxable year including such items from another estate or trust of which the first estate or trust is a beneficiary. Such determination of source shall be made in accordance with the applicable rules of section thirty-two of this article as in the case of a nonresident individual.

(2) Allocation among estate or trust beneficiaries.

(A) The amounts determined under subdivision (1) of subsection (a) shall be allocated among the estate or trust and its beneficiaries (including, solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income.

(B) The amounts so allocated shall have the same character under this article as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(b) Alternative methods of determining shares.

(1) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary (including, solely for the purposes, of this allocation, resident beneficiaries) in the net amount determined under subdivision (1) of subsection (a) shall be in proportion to the beneficiary's share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any such other amounts of such income distributed in such year. Any balance of such net amounts shall be allocated to the estate or trust.

(2) The Tax Commissioner may, on written application filed on or before the due date of the return due under this article for the taxable year from the estate or trust determined without

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regard to any extension of time for filing such return, authorize use of such other methods of determining the representative shares of the beneficiaries and of the estate or trust in its income derived from West Virginia sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as the commissioner may require.

(3) The Tax Commissioner may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from West Virginia sources as may be appropriate and equitable. Such method may be used by the fiduciary in his or her discretion whenever the allocation of such respective shares under subsection (a) or subdivision (1) of subsection (b) would result in an inequity which is substantial in amount.

(c) Effective date. -- The amendments to this section enacted in the year 1992 shall apply to taxable years beginning after December 31, 1991.

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