WEST VIRGINIA CODE: §11-21-51

§11-21-51. Returns and liabilities.

(a) General. — On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve of this article §11-21-12 of this code in excess of the sum of his or her West Virginia personal exemptions: *Provided*, That the Tax Commissioner shall by legislative rule specify circumstances when an individual is not required to file a return as a result of the application of section ten of this article §11-21-10 of this code;

(2) Every resident 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) required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year, determined under section eighteen of this article §11-21-18 of this code;

(3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two of this article §11-21-32 of this code, in excess of the sum of his or her West Virginia personal exemptions, except when all of such nonresident individual's West Virginia source income is taxed on a composite return filed under this article for the taxable year; and

(4) Every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two of this article §11-21-32 of this code as in the case of a nonresident individual, in excess of its West Virginia exemption.

(b) Husband and wife. —

(1) If the federal income tax liability of husband or wife is determined on a separate federal income tax return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in subdivision (3) of this subsection are determined on a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several; or

(B) They may elect to file separate West Virginia income tax returns on a single or separate form, as may be required by the Tax Commissioner, if they comply with the requirements of

WV Legislature

the Tax Commissioner in setting forth information, and in such event their tax liabilities shall be separate.

(3) If either husband and/or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the Tax Commissioner, and in such event their tax liabilities shall be separate.

(c) Decedents. — The return of any deceased individual shall be made and filed by his or her executor, administrator or other person charged with his or her property.

(d) Individuals under a disability. — The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), by his or her duly authorized agent.

(e) Estates and trusts. — The return for 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 made and filed by the fiduciary.

(f) Joint fiduciaries. — If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Tax a debt. — Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the State of West Virginia.

(h) Cross reference. — For provisions as to information returns by partnerships, employers and other persons, see section fifty-eight of this article §11-21-58 of this code. For provisions as to composite returns of nonresidents, see section fifty-one-a of this article §11-21-51a of this code. For provisions as to information returns by electing small business corporations, see section thirteen-b, article twenty-four of this chapter.

(i) Effective date. — This section, as amended by this act in the year 1996, shall apply to all taxable years beginning after December 31, 1995.

WVLegislature