WEST VIRGINIA CODE: §11-21-59

§11-21-59. Report of change in federal taxable income.

(a) Unless the provision of §11-21A-1 et seq. of this code apply, if the amount of a taxpayer's federal taxable income reported on his or her federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within 90 days after the final determination of such change, correction, or renegotiation, or as otherwise required by the Tax Commissioner, and shall concede the accuracy of the determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within 90 days thereafter an amended return under this article, and shall give such information as the Tax Commissioner may require. The Tax Commissioner may by rule prescribe such exceptions to the requirements of this section as he or she determines appropriate.

(b) (1) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination, or within the period provided in §11-10-14 of this code, whichever period expires later.

(2) Within two years of the date of the final determination, or within the period provided in §11-10-14 of this code, whichever period expires later, the Tax Commissioner may allow a credit, make a refund, or mail to the taxpayer a notice of proposed overpayment resulting from the final federal determination.

(c) For the purposes of this section, assessments under a partial agreement, closing agreement covering specific matters, jeopardy or advance payment are considered part of the final determination and must be submitted to the Tax Commissioner with the final determination.

(d) If a partial agreement, a closing agreement covering specific matters or any other agreement with the United States Treasury Department would be final except for a federal extension still open for flow-through adjustments from other entities or other jurisdictions, the final determination is the date the taxpayer signs the agreement. Flow-through adjustments include, but are not limited to, items of income gain, loss and deduction that flow through to equity owners, of a partnership, or other pass-through entity. Flow-through adjustments are finally determined based on criteria specified in §11-21-59(g) of this code.

(e) The Tax Commissioner is not required to issue refunds based on any agreement other than a final determination.

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(f) If a taxpayer has filed an amended federal return, and no corresponding West Virginia amended return has been filed with the Tax Commissioner, then the period of limitations for issuing a notice of assessment shall be reopened and shall not expire until three years from the date of delivery to the Tax Commissioner by the taxpayer of the amended federal return. However, upon the expiration of the period of limitations as provided in §11-10-15 of this code, then only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing West Virginia income, deductions, gains, losses, credits, and the effect of such adjustments on West Virginia allocations and apportionments.

(g) For the purposes of this section, "final determination" means the appeal rights of both parties have expired or have been exhausted relative to the tax year for federal income tax purposes.

(h) The amendments made to this section in the year 2019 shall apply, without regard to taxable year, to federal determinations that become final on or after the effective date of the amendments to this section in the year 2019.

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