# WEST VIRGINIA CODE CHAPTER 11 ARTICLE 21

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## §11-21-1. Legislative findings.

The Legislature hereby finds and declares that the adoption by this state for its personal income tax purposes of the provisions of the laws of the United States relating to the determination of income for federal income tax purposes will (1) simplify preparation of state income tax returns by taxpayers, (2) improve enforcement of the state income tax through better use of information obtained from federal income tax audits, and (3) aid interpretation of the state tax law through increased use of federal judicial and administrative determinations and precedents.

The Legislature does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

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## §11-21-2. Short title; arrangement and classification.

This article may be cited as the "West Virginia Personal Income Tax Act." No inference, implication of presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, nor shall the descriptive matter or headings relating to any part, section, subsection, or paragraph be given any legal effect.

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## §11-21-3. Imposition of tax; persons subject to tax.

(a) Imposition of tax. — A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate, electing pass-through entity, and trust: *Provided*, That, for tax years beginning on or after January 1, 2024, the income of a non-grantor trust administered by a licensed private trust company created pursuant to the provisions of §31I-1-1 *et seq*. of this code shall have no tax imposed upon it by this section.

(b) Partners and partnerships. — A partnership or other pass-through entity as such shall not be subject to tax under this article, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. Persons carrying on business as partners or owners of a pass-through entity shall be liable for tax under this article only in their separate or individual capacities, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. However, partnerships and other pass-through entities are subject to the tax imposed by this article to the extent they elect to pay additional West Virginia income taxes owed that are attributable to final federal partnership audit adjustments under §11-21A-3 of this code.

(c) Associations taxable as corporations. — An association, trust, or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) Exempt trusts and organizations. — A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) Cross references. — For definitions of West Virginia taxable income of:

(1) Resident individual, see §11-21-11 of this code.

(2) Resident estate or trust, see §11-21-18 of this code.

(3) Nonresident individual, see §11-21-30 of this code.

(4) Nonresident estate or trust, see §11-21-38 of this code.

(f) Effective date. — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022.

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**§11-21-3a. Imposition of tax; persons subject to tax.**

(a) Definitions. — As used in this section, or §11-21-3 of this code, or both, the following terms have the following meanings. Any term used in this section that is not defined in this section has the same meaning as when used elsewhere in this article. Any term undefined in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, in accordance with §11-21-9 of this code, unless a different meaning is clearly required.

(b) "Electing pass-through entity" means a qualifying pass-through entity that elects to be subject to the tax levied under this article for a taxable year.

(c) "Owner" means a person that is a partner, member, shareholder, or investor in an electing pass-through entity for any portion of the taxable year.

(d) "Income" means the sum of:

(1) The owners' distributive shares of the income, gain, expense, or loss of an electing pass-through entity for the taxable year, as reported for federal income tax purposes; and

(2) The resident owner's distributive share of the electing pass-through entity's income or loss not attributable to West Virginia.

(e) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate, as provided in §11-1-1 *et seq*. of this code.

(f) "Pass-through entity" means any partnership or other business entity that is not subject to tax under §11-24-1 *et seq*. of this code.

(g) "Entity" means any person that is not an individual.

(h) A pass-through entity that is not a disregarded entity for federal income tax purposes may elect to be subject to the tax levied under this section by filing with the Tax Commissioner a form prescribed by the commissioner making such election on or before the deadline to file the return, as specified in §11-21-51 of this code. Such election applies only to the taxable year for which the election is made and, once made, is irrevocable for that year.

(i) For taxable years beginning on and after January 1, 2022, an electing pass-through entity may make an election, in a format and according to such requirements and procedures established by the Tax Commissioner, to pay the tax levied by this article at the entity level for the taxable year.

(j) An electing pass-through entity required to file a return under this article shall make an election for the taxable period covered by such return. The election must be made on or before the due date for filing the applicable return, including any extensions that have been

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granted. Such election applies only to the taxable year for which the election is made and, once made, is irrevocable for that year.

(k) A tax equal to the top marginal rate on individuals under this article on the West Virginia taxable income of an electing pass-through entity that makes the election provided under this section, is hereby annually imposed.

(l) The tax levied under this section shall be calculated without regard to any deductions or credits otherwise permitted to be claimed by an owner or member of the electing pass-through entity in computing the owner's aggregate tax liability under this article and not utilized by the pass-through entity in determining its taxable income.

(m) An electing pass-through entity that elects to pay the tax under this section may be eligible for credits, deductions, or other adjustments to taxable income provided by any applicable sections of this code including the credit provided in §11-21-20 of this code: *Provided*, That a qualifying pass-through entity's taxable income shall be adjusted to eliminate any federal deduction for state and local income taxes.

(n) The full amount of the tax payable as shown on the return of the electing pass-through entity must be paid to the state within the time allowed for filing the return. In the case of any overpayment of the tax imposed under this section, only the electing pass-through entity may request a refund of the overpayment. In the case of any underpayment of tax imposed under this section, the Tax Commissioner may collect the tax from the electing pass-through entity pursuant to §11-10-1 *et seq*. of this code: *Provided*, That shareholders, owners, and partners shall be jointly and severally liable for any underpayment of tax not paid by, or collected from, the pass-through entity.

(o) With respect to an electing pass-through entity that pays the tax imposed under this section, the tax shall be treated as a tax imposed on the pass-through entity itself. The tax levied under this section is intended to comply with the provisions of Internal Revenue Service Notice 2020-75 in which such tax paid by an electing pass-through entity is deductible to the entity for federal income tax purposes.

(p) The Tax Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to administer the tax levied pursuant to the provisions of this section. These rules must include a description of how the adjustments to income and the credit authorized by this section apply to direct or indirect owners of an electing pass-through entity based upon various ownership structures.

(q) There is hereby allowed a credit against a taxpayer's aggregate tax liability under this article for a taxpayer who is an owner of an electing pass-through entity. The credit shall equal the owner's proportionate share of the tax levied under this article remitted by the owner's electing pass-through entity for the taxable year. The credit shall be claimed for the taxpayer's taxable year that includes the last day of the electing pass-through entity's taxable year for which the tax levied under this section was paid. If the credit exceeds the

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aggregate amount of tax otherwise due, the excess may be carried forward by the taxpayer for up to five taxable years. The Tax Commissioner may request that a taxpayer claiming a credit under this section furnish information as is necessary to support the claim for the credit under this section, and no credit shall be allowed unless information requested from the taxpayer is provided to the Tax Commissioner.

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## §11-21-4. Rate of tax -- Taxable years ending prior to January 1, 1963.

(a) Rate of tax on individuals. -- The tax imposed by section three of this article on the West Virginia taxable income of every individual (other than a head of a household to whom subsection (b) applies) and upon the West Virginia taxable income of every estate and trust shall be equal to six per centum of the federal income tax which would be imposed on an identical amount of federal taxable income under subsection (a) of section one of the United States Internal Revenue Code of 1954.

(b) Rate of tax on heads of households. -- The tax imposed by section three of this article on the West Virginia taxable income of every individual who is a head of a household in the determination of his federal income tax for the taxable year shall be equal to six per centum of the federal income tax which would be imposed upon an identical amount of federal taxable income under subsection (b) of section one of the United States Internal Revenue Code of 1954.

(c) Rates of tax in case of joint return or return of surviving spouse. -- In the case of a joint return of a husband and wife, the tax imposed by section three of this article on the West Virginia taxable income shall be equal to six per centum of twice the tax which would be imposed upon half the identical amount of federal taxable income under subsection (a) of section one of the United States Internal Revenue Code of 1954. For purposes of this subsection of this article and for the purposes of section five of this article, the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse shall be treated as a joint return of a husband and wife.

(d) Effective date. -- The provisions of this section shall be given effect in determining the rate of tax imposed by this article for all taxable years or portions thereof ending prior to January 1, 1963.

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## §11-21-4a. Rate of tax -- Taxable years beginning on or after January 1, 1963, and before January 1, 1970.

(a) Rate of tax on individuals, heads of households, estates and trusts. -- The tax imposed by section three of this article on the West Virginia taxable income of every individual, every individual who is a head of a household in the determination of his federal income tax for the taxable year, and every estate and trust shall be determined in accordance with the following table:

(FORM OMITTED)

(b) Rate of tax in case of joint return or return of surviving spouse. -- In the case of a joint return of a husband and wife and the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse, the tax imposed by section three of this article on the West Virginia taxable income shall be determined in accordance with the following table:

(FORM OMITTED)

(c) Applicability of this section. -- The provisions of this section shall be applicable in determining the rate of tax imposed by this article for all taxable years or portions thereof beginning on or after January 1, 1963, and before January 1, 1970.

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## §11-21-4b. Same -- Taxable years beginning on or after January 1, 1970, and before January 1, 1971.

(a) Rate of tax on individuals, heads of households, estates and trusts. -- The tax imposed by section three of this article on the West Virginia taxable income of every individual, every individual who is a head of a household in the determination of his federal income tax for the taxable year, and every estate and trust shall be determined in accordance with the following table:

(FORM OMITTED)

(b) Rate of tax in case of joint return or return of surviving spouse. -- In the case of a joint return of a husband and wife and the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse, the tax imposed by section three of this article on the West Virginia taxable income shall be determined in accordance with the following table:

(FORM OMITTED)

(c) Applicability of this section. -- The provisions of this section shall be applicable in determining the rate of tax imposed by this article for all taxable years or portions thereof beginning on or after January 1, 1970, and before January 1, 1971.

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## §11-21-4c. Rate of tax -- Taxable periods beginning on or after January 1, 1971 and ending before April 1, 1983.

(a) Rate of tax on individuals, heads of households, estates and trusts. -- The tax imposed by section three of this article on the West Virginia taxable income of every individual, every individual who is a head of a household in the determination of his federal income tax for the taxable year, and every estate and trust shall be determined in accordance with the following table:

(FORM OMITTED)

(b) Rate of tax in case of joint return or return of surviving spouse. -- In the case of a joint return of a husband and wife and the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse, the tax imposed by section three of this article on the West Virginia taxable income shall be determined in accordance with the following table:

(FORM OMITTED)

(c) Applicability of this section. -- The provisions of this section shall be applicable in determining the rate of tax imposed by this article for all taxable years or portions thereof beginning on or after January 1, 1971, and ending before April 1, 1983.

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## §11-21-4d. Rate of tax -- Taxable periods beginning on or after April 1, 1983.

(a) Rate of tax on individuals, estates and trusts. -- The tax imposed by section three of this article on the West Virginia taxable income of every individual, and every estate and trust shall be determined in accordance with the following table:

(FORM OMITTED)

(b) Rate of tax on heads of households. -- The tax imposed by section three of this article, on the West Virginia taxable income of every individual who is a head of a household in the determination of his federal income tax for the taxable year, shall be determined in accordance with the following table:

(FORM OMITTED)

(c) Rate of tax in case of joint return or return of surviving spouse. -- In the case of a joint return of a husband and wife and the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse, the tax imposed by section three of this article on the West Virginia taxable income shall be determined in accordance with the following table:

(FORM OMITTED)

(d) Applicability of this section. -- The provisions of this section shall be applicable in determining the rate of tax imposed by this article for all taxable periods or portions thereof beginning on or after April 1, 1983.

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## §11-21-4e. Rate of tax -- Taxable years beginning on or after January 1, 1987.

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, estates and trusts. -- The tax imposed by section three of this article on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust shall be determined in accordance with the following table:

If the West Virginia

taxable income is: The tax is:

Not over $10,000 3% of the taxable income

Over $l0,000 but not $300.00 plus 4% of excess

over $25,000 over $10,000

Over $25,000 but not $900.00 plus 4.5% of excess

over $40,000 over $25,000

Over $40,000 but not $1,575.00 plus 6% of excess

over $60,000 over $40,000

Over $60,000 $2,775.00 plus 6.5% of excess

over $60,000

(b) Rate of tax on married individuals filing separate returns. -- In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by section three of this article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia

taxable income is: The tax is:

Not over $5,000 3% of the taxable income

Over $5,000 but not $150.00 plus 4% of excess

over $l2,500 over $5,000

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Over $l2,500 but not $450.00 plus 4.5% of

over $20,000 excess over $l2,500

Over $20,000 but not $787.50 plus 6% of excess

over $30,000 over $20,000

Over $30,000 $1,387.50 plus 6.5% of

excess over $30,000

(c) Applicability of this section. -- The provisions of this section, as amended by this act, shall be applicable in determining the rate of tax imposed by this article for all taxable years beginning after December 31, 1986, and shall be in lieu of the rates of tax specified in section four-d of this article.

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## §11-21-4f. Effect of rate changes during taxable year.

(a) If any rate of tax imposed by this article changes to become effective after December 31, of a calendar year, and if the taxable year includes the effective date of the change of rate (unless that date is the first day of the taxable year) then: (1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change of rate, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of months in each period bears to the number of months in the entire taxable year.

(b) For purposes of subsection (a):

(1) If the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) If a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change of rate.

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**§11-21-4g Rate of tax — Taxable years beginning on and after January 1, 2023.**

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts. — The tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and 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 determined in accordance with the following table:

If the West Virginia taxable

income is: The tax is:

Not over $10,000 2.36% of the taxable income

Over $10,000 but not over $25,000 $236 plus 3.15% of excess over $10,000

Over $25,000 but not over $40,000 $708.50 plus 3.54% of excess over $25,000

Over $40,000 but not over $60,000 $1,239.50 plus 4.72% of excess over $40,000

Over $60,000 $2,183.50 plus 5.12% of excess over $60,000

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable

income is: The tax is:

Not over $5,000 2.36% of the taxable income

Over $5,000 but not over $12,500 $118 plus 3.15% of excess over $5,000

Over $12,500 but not over $20,000 $354.25 plus 3.54% of excess over $12,500

Over $20,000 but not over $30,000 $619.75 plus 4.72% of excess over $20,000

Over $30,000 $1,091.75 plus 5.12% of excess over $30,000

(c) Rate of tax on non-grantor trusts administered by licensed private trust companies. – In

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the case of non-grantor trusts administered by licensed private trust companies created pursuant to §31I-1-1 *et seq*. of this code, there is no tax imposed by §11-21-3 of this code.

(c) (d) Effect of rates on Nonresident Composite and Withholding Obligations — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the retroactive date specific in §11-21-4g(d) of this code subsection (e) of this section, whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77, of this article, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq*. of this code), the stated percentage shall be changed to 5.12%.

(d) (e) Applicability of this section. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply retroactively for all taxable years beginning on and after January 1, 2023, and shall be in lieu of the rates of tax specified in §11-21-4e of this code.

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**§11-21-4h. Future personal income tax reductions.**

(a) For the purposes of this section, the terms defined in this section have the meanings ascribed to them unless a different meaning is clearly required by the context in which the term is used:

(1) "Adjusted consumer price ratio" means the fiscal year consumer price index divided by the base year consumer price index.

(2) "Adjusted general revenue fund collections" means all net general revenue fund collections minus the net general revenue fund collections related to the imposition of the taxes imposed under the provisions of §11-13A-1 *et seq*. of this code.

(3) "Base year revenues" means actual general revenue fund collections for 2019 fiscal year, which is $4,293,884,754.

(4) "Base year consumer price index" means a 12-month average of the not seasonally adjusted Consumer Price Index for all urban consumers for the months between July 2018 and June 2019.

(5) "Excess fiscal year general revenue fund collections" means the positive difference from subtracting the inflation adjusted base year revenues from the adjusted general revenue fund collections from the immediately preceding fiscal year.

(6) "Fiscal year consumer price index" means a 12-month average of the not seasonally adjusted Consumer Price Index for all urban consumers for the months between July and June of the immediately preceding fiscal year.

(7) "Inflation adjusted base year revenues" means the base year general revenue fund collections multiplied by the adjusted consumer price ratio.

(b) Future personal income tax rate reductions. — Beginning on August 15, 2026, and every August 15 thereafter, the Secretary of Revenue will determine whether the total fiscal year adjusted general revenue fund collections from the immediately preceding fiscal year are in excess of the inflation adjusted base year revenues. If the total fiscal year adjusted general revenue fund collections from the immediately preceding fiscal year are in excess of the inflation adjusted base year revenues, then there will be a reduction in the personal income tax rates as determined under this section beginning the second taxable year following the determination.

(c) Determination of rate. — In order to determine the amount of a personal income tax reduction, the excess fiscal year general revenue fund collections will be divided by the amount of the immediately preceding fiscal year’s total personal income tax collections for all funds and will be rounded down to the nearest whole percentage. The amount of the percentage of reduction will be applied equally across the tax rates applicable in the tax year immediately preceding the rate reduction: *Provided*, That reduction in personal income tax



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rates may not result in an amount larger than a 10 percent reduction in the rates set forth in §11-21-4e of this code.

(d) Certification of reduction. – The Secretary of Revenue and the State Auditor will certify to the Tax Commissioner that a rate change is required under this section as soon as possible after August 15 so that the Tax Commissioner may notify taxpayers of any change in personal income tax rates. The certification will provide base year revenues, the total fiscal year general revenue fund collections from the immediately preceding fiscal year, the base year consumer price index, the fiscal year consumer price index, the adjusted consumer price ratio, the amount of inflation adjusted base year revenues, the amount of excess fiscal year general revenue fund collections and the amount of the immediately preceding fiscal year's total personal income tax collections for all funds.

(e) Applicability of this section. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply for all taxable years beginning on and after January 1, 2027, and shall be in lieu of the rates of tax specified in §11-21-4j of this code.

(f) Annual reports. — The Tax Commissioner shall prepare an annual report to the Joint Committee on Government and Finance detailing any relevant modifications to the personal income tax.

(g) Rulemaking. — Notwithstanding any provision of this code to the contrary, the Tax Commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code explaining and implementing this section.

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**§11-21-4i. Rate of tax — Taxable years beginning on and after January 1, 2025.**

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts. — The tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and 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 determined in accordance with the following table:

If the West Virginia taxable

income is: The tax is:

Not over $10,000 2.22% of the taxable income

Over $10,000 but not over $25,000 $222 plus 2.96% of excess over $10,000

Over $25,000 but not over $40,000 $666 plus 3.33% of excess over $25,000

Over $40,000 but not over $60,000 $1,165.50 plus 4.44% of excess over $40,000

Over $60,000 $2,053.50 plus 4.82% of excess over $60,000

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable

income is: The tax is:

Not over $5,000 2.22% of the taxable income

Over $5,000 but not over $12,500 $111 plus 2.96% of excess over $5,000

Over $12,500 but not over $20,000 $333 plus 3.33% of excess over $12,500

Over $20,000 but not over $30,000 $582.75 plus 4.44% of excess over $20,000

Over $30,000 $1,026.75 plus 4.82% of excess over $30,000

(c) Rate of tax on non-grantor trusts administered by licensed private trust companies. – In



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the case of non-grantor trusts administered by licensed private trust companies created pursuant to §31I-1-1 *et seq*. of this code, there is no tax imposed by §11-21-3 of this code.

(d) Effect of rates on Nonresident Composite and Withholding Obligations — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the date specified in subsection (e) of this section, whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77 of this code, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq*. of this code), the stated percentage shall be changed to 4.82%.

(e) Applicability of this section. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply for all taxable years beginning on and after January 1, 2025, and shall be in lieu of the rates of tax specified in §11-21-4g of this code and as those rates were modified by the application of §11-21-4h of this code in 2024.

(f) Applicability of §11-21-4h of this code. – The Legislature finds that in August 2024, the Tax Commissioner issued an administrative notice reducing the tax rates imposed by §11-21-4g of this code for all taxable years beginning on and after January 1, 2025, pursuant to application of §11-21-4h of this code. The Legislature intends that the provisions of the enactment of this section in 2024 supersede the tax rates set forth in §11-21-4g of this code and set forth in the administrative notice. It is the further intent of the Legislature that §11-21-4h of this code continue in full force and effect as amended.

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## §11-21-4j. Rate of tax — Taxable years beginning on and after January 1, 2026.

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts. — For taxable years beginning on and after January 1, 2026, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and 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 determined in accordance with the following table:

If the West Virginia taxable

income is: The tax is:

Not over $10,000 2.11% of the taxable income

Over $10,000 but not over $25,000 $211 plus 2.81% of excess over $10,000

Over $25,000 but not over $40,000 $632.50 plus 3.16% of excess over $25,000

Over $40,000 but not over $60,000 $1,106.50 plus 4.22% of excess over $40,000

Over $60,000 $1,950.50 plus 4.58% of excess over $60,000

(b) Rate of tax on married individuals filing separate returns. — For taxable years beginning on and after January 1, 2026, in the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable

income is: The tax is:

Not over $5,000 2.11% of the taxable income

Over $5,000 but not over $12,500 $105.50 plus 2.81% of excess over $5,000

Over $12,500 but not over $20,000 $316.25 plus 3.16% of excess over $12,500

Over $20,000 but not over $30,000 $553.25 plus 4.22% of excess over $20,000

Over $30,000 $975.25 plus 4.58% of excess over $30,000

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(c) Rate of tax on non-grantor trusts administered by licensed private trust companies. – In the case of non-grantor trusts administered by licensed private trust companies created pursuant to §31I-1-1 *et seq*. of this code, there is no tax imposed by §11-21-3 of this code.

(d) Effect of rates on nonresident composite and withholding obligations. — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the date specified in subsection (e) of this section, whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77 of this code, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq*. of this code), the stated percentage shall be changed to 4.58 percent.

(e) Applicability of this section. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply for all taxable years beginning on and after January 1, 2026, and shall be in lieu of the rates of tax specified in §11-21-4i of this code.

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## §11-21-5. Optional tax for certain resident individuals.

(a) General. -- The Tax Commissioner may promulgate tables enabling resident individuals who meet the conditions of this section to compute their taxes under section three of this article on the basis of their federal adjusted gross incomes.

(b) Tables. -- The tables promulgated under this section shall show the amounts of tax due under section three of this article to the nearest $2 (or such smaller amount as the Tax Commissioner may establish).

(c) Conditions for optional computation. -- The optional tax computation under this section may be elected only if all the following conditions are satisfied by the taxpayer, or by both husband and wife whose federal income tax is determined on a joint return:

(1) The taxpayer has elected to take the standard deduction for federal income tax purposes or to pay the federal optional tax.

(2) The taxpayer has no items of income or deduction described in section twelve (b) or (d) as an individual, as a partner, or as a beneficiary of an estate or trust.

(3) The taxpayer's federal income tax is not reduced by operation of:

(a) The federal alternative tax on long term capital gains, or

(b) A federal provision which has the effect of taxing income of the taxable year as if it were partly or wholly income of a prior taxable year.

(4) The taxpayer satisfies such other conditions, not inconsistent with the purposes of this section, as may be specified by the Tax Commissioner.

(d) Manner of election. -- The election by a taxpayer to compute his tax under this section shall be made under regulations of the Tax Commissioner.

(e) Husband and wife computing West Virginia taxes separately. -- (1) A husband or wife who files a separate federal return may elect the optional tax computation under this section only if the other spouse's tax under this article, if any, is determined under this section.

(2) A husband and wife who file a joint federal return may not elect the optional tax computation under this section if they elect to determine their West Virginia taxes separately.

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## §11-21-6. Accounting periods and methods.

(a) Accounting periods. -- A taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(b) Change of accounting periods. -- If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this article shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the West Virginia standard deduction, the West Virginia personal exemptions and the credits allowed under section eight shall be prorated under regulations of the Tax Commissioner.

(c) Accounting methods. -- A taxpayer's method of accounting under this article shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, West Virginia taxable income shall be computed under such method as in the opinion of the Tax Commissioner clearly reflects income.

(d) Change of accounting methods. -- (1) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were rateably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the Tax Commissioner.

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## §11-21-7. Resident and nonresident defined.

(a) Resident individual. -- Resident individual means an individual:

(1) Who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or

(2) Who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state.

(b) Nonresident individual. -- A nonresident individual means an individual who is not a resident.

(c) Resident estate or trust. -- A resident estate or trust means:

(1) The estate of a decedent who at his death was domiciled in this state,

(2) A trust created by will of a decedent who at his death was domiciled in this state, or

(3) A trust created by, or consisting of property of, a person domiciled in this state.

(d) Nonresident estate or trust. -- A nonresident estate or trust means an estate or trust which is not a resident.

(e) Cross reference. -- For effect of change of an individual's resident status, see section fifty-four.

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## §11-21-8. Credits against tax.

(a) Business and occupation tax credit.--A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: Provided, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Severance tax credit.--On and after July 1, 1987, a credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen-a, chapter eleven of this code: Provided, That the amount of such severance tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen-a shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

(c) Expiration of credit.--The credit authorized in subsection (b) of this section shall expire and not be authorized or allowed for any taxable year beginning on or after October 1, 1990.

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## §11-21-8a. Credit for qualified rehabilitated buildings investment.

A credit against the tax imposed by the provisions of this article is allowed as follows:

*Certified historic structures*. — For certified historic structures, the credit is equal to 10 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation expenditure, subject to the limitations and other provisions of §11-24-23a of this code : *Provided, however*, That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further*, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq*. of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as “certified historic structures”, and further defined as a “qualified rehabilitated building,” as defined under §47(c)(1), Title 26 of the United States Code, as amended.

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## §11-21-8b. Definitions.

(a) "Certified historic structure" means any building located in this state that is listed individually in the national register of historic places or located in a registered historic district, reviewed by the West Virginia Division of Culture and History, and certified by the national park service as being of historic significance to the district.

(b) "Certified rehabilitation" means any rehabilitation of a certified historic building that is reviewed by the West Virginia Division of Culture and History, and certified by the national park service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

(c) "Historic district" means any district that is listed in the national register of historic places or designated under a state or local statute which has been certified as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district and which is certified as substantially meeting all of the requirements for listing of districts in the national register of historic places.

(d) "Historic preservation certification application" means the application forms published by the national park service, United States department of the interior, Parts 1, 2 and 3, form No. 10-168.

(e) "Secretary of the interior standards" means standards and guidelines adopted and published by the national park service, United States department of the interior, for rehabilitation of historic properties.

(f) "State historic preservation officer" means the state official designated by the Governor pursuant to provisions in the national historic preservation act of 1966, as amended and further defined in section six, article one, chapter twenty-nine of this code.

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## §11-21-8c. Procedures.

Application and processing procedures for provisions of this section shall be the same as any required under provisions of Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1. Successful completion of a historic preservation certification application automatically qualifies the applicant to be considered for tax credits under this section.

Successful certification by the national park service of a rehabilitation of a building that results in such building being a "qualified rehabilitated building" within the meaning of §47(c)(1), Title 26 of the United States Code, and amendments thereto, automatically qualifies the applicant for tax credits under this section. The state historic preservation officer's role in the application procedure shall be identical to that in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1.

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## §11-21-8d. Standards.

All standards including the secretary of the interior standards and provisions in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1, that apply to tax credits available from the United States government apply to this section as well.

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## §11-21-8e. Carryback, carryforward.

(a) Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section eight-a of this article which may not be taken in the taxable year to which the credit applies qualifies for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: Provided, That the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: Provided, however, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section eight-a of this article, may not be carried back to any prior taxable year: Provided further, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section eight-a of this article may be carried over to each of the next ten tax years following the first tax year for which the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.

(b) Effective for taxable years beginning on and after January 1, 2001, credits granted to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company or multiple owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to an agreement among the shareholders, partners, members or owners documenting an alternative distribution method. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide the method of reporting the alternative method of distribution authorized by this section.

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## §11-21-8f. Disclosure of credit applications and grants.

The Tax Commissioner shall require disclosure of information regarding credits granted pursuant to section eight-a of this article in accordance with the provisions of section five-s, article ten of this chapter.

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**§11-21-8g. Credit for qualified rehabilitated residential building investment.**

(a) A credit against the tax imposed by the provisions of this article is allowed for residential certified historic structures. The credit is equal to twenty percent of eligible rehabilitation expenses in the rehabilitation of a certified historic structure. The credit is available for residential certified historic structures located in this state that are reviewed by the West Virginia Division of Culture and History and are determined to be listed on the national register of historic places either individually or as a contributing building within a historical district that is listed on the national register of historic places.

(b)(1) "Certified historic structure" means any building located in this state that is determined to be listed individually in the national register of historic places or located in a registered historic district, during the review by the West Virginia Division of Culture and History.

(2) "Certified rehabilitation" means any rehabilitation of a certified historic structure that is reviewed by the West Virginia Division of Culture and History, and is determined by the Division of Culture and History to be consistent with the historic character of the property and, where applicable, the district in which it is located.

(3) "Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's basis for income tax purposes.

(4) "Historic district" means a group of buildings, structures or sites that taken together make up a coherent whole with similar historic or architectural meaning that is listed in the national register of historic places.

(5) "Historic preservation application" means application forms published by the national park service, United States department of the interior, Parts 1, 2 and 3, Form No. 1-168, or its successor, or comparable application forms prepared by the Division of Culture and History.

(6) "Material rehabilitation" means improvements, repairs, alterations or additions consistent with the "secretary of the interior's standards for rehabilitation," the actual cost of which amounts to at least twenty percent of the assessed value of a certified historic structure for ad valorem real estate tax purposes for the year before such rehabilitation expenses were incurred, exclusive of the assessed value of the land.

(7) "Residential certified historic structure" means any certified historic structure that is:

(A) Classified as Class II property for levy purposes pursuant to section five, article eight, chapter eleven of this code for the year in which the rehabilitation expenses are incurred; or

(B) Not classified as Class II property for levy purposes for the year in which the rehabilitation expenses are incurred but will satisfy the requirements for classification as Class II for real property assessment purposes pursuant to section five, article eight, chapter



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eleven of this code as of July 1, of the year following the year in which the rehabilitation expenses are incurred.

(8) "Secretary of the interior standards" means standards and guidelines adopted and published by the national park service, United States department of the interior, for rehabilitation of historic properties.

(9) "State historic preservation officer" means the state official designated by the Governor pursuant to provisions in the national historic preservation act of 1966, as amended and further defined in section six, article one, chapter twenty-nine of this code.

(c)(1) Application and processing procedures for provisions of this section shall be the same or substantially similar as any required under provisions of 36 C.F.R., Part 67, and to the extent applicable, 26 C.F.R., Part 1. Obtaining historic preservation certification by proper application automatically qualifies the applicant to be considered for tax credits under this section.

(2) The state historic preservation officer's role in the application procedure shall be identical, or substantially similar, to that in 36 C.F.R., Part 67 and 26 C.F.R., Part 1, to the extent applicable.

(d) All standards including the secretary of the interior standards and provisions in 36 C.F.R., Part 67 and 26 C.F.R., Part 1 that apply to tax credits available from the United States government apply to this section, except that the property eligible for the tax credit under this section may not be income producing property or property for which depreciation is allowed under 26 U.S.C. §168.

(e) If the amount of the credit for qualified rehabilitated residential building investment exceeds the taxpayer's tax liability for the taxable year to which the credit applies, the amount that exceeds the tax liability for the taxable year may be carried over for credits against the income taxes of the taxpayer in each of the ensuing five tax years or until the full credit is used, whichever occurs first. In no event may the amount of the credit taken in a taxable year exceed the tax liability due for the taxable year.

(f) The Tax Commissioner shall require disclosure of information regarding credits granted pursuant to this section in accordance with the provisions of section five-s, article ten of this chapter. The commissioner of the West Virginia Division of Culture and History may establish by rule the requirements to implement the credit for qualified rehabilitated residential building investment, including reasonable fees to defray the necessary expenses of administration of the credit.

(g) The credit authorized by this section is available for tax years beginning after December 31, 1999.

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## §11-21-8h. Distribution, sale, transfer or assignment of qualified rehabilitated building investment tax credit.

(a) Any person eligible for credit under section eight-a or eight-g of this article may transfer, sell or assign any unused credits. Any person that transfers, sells or assigns any unused portion of a tax credit shall obtain a certificate of approval from the Division of Culture and History to transfer, sell or assign the stated amount of unused tax credit. The Division of Culture and History shall, by the last day of January each year provide in an electronic medium acceptable to the Tax Commissioner, a report listing the name of the transferor, the transferor's tax identification number, the name of the transferee, the transferee's tax identification number, the amount of credit transferred, sold or assigned and the date of the transfer, sale or assignment for each transfer, sale or assignment approved by the Division of Culture and History during the preceding calendar year.

(b) Credits granted to or acquired by a pass-through entity created or recognized under West Virginia law, or by multiple owners of property, if not transferred, sold or assigned, may be divided among the partners, members, shareholders or owners either according to the distributive shares of income of the entity or pursuant to an executed agreement among the partners, members, shareholders or owners if the agreement documents an alternate method of distribution, as provided in section eight-e of this article.

(c) Any transferee, purchaser or assignee of tax credits under this section may use the acquired credits to offset the tax imposed by this article or article twenty-four of this chapter upon the transferee, purchaser or assignee. To claim the tax credit, the transferee, purchaser or assignee shall attach the certificate obtained by the transferor, seller or assignor in accordance with subsection (a) of this section to the tax return against which the credit is claimed when the tax return is filed with the Tax Commissioner.

(d) If the credit allowed under this section exceeds the transferee's, purchaser's or assignee's tax due for the current tax year, the transferee, purchaser or assignee of the tax credit may carry forward the excess in accordance with section eight-e of this article, or section twenty-three-e, article twenty-four of this chapter when the transferee, purchaser or assignee is subject to the tax imposed by that article.

(e) The Tax Commissioner may promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code, necessary to provide procedures for the distribution, transfer, or assignment and the claiming of the credit allowed by sections eight-a and eight-g of this article.

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## §11-21-9. Meaning of terms.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2024, but prior to January 1, 2026, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2026, may be given any effect.

(b) Medical savings accounts. — The term "taxable trust" does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to said sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) Surtax. — The term "surtax" means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year 2026 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2026, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low-income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in §11-21-21(b) of this code and as reflected in the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to "each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes", this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.

(g) For taxable years beginning on and after January 1, 2026, whenever this article refers to "additional modification reducing federal adjusted gross income related to gaming and gambling loses", this phrase means the modification the person would have been allowed to

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claim pursuant to §11-21-12n of this code for the taxable year had the federal income tax law not been amended to modify the modification reducing federal adjusted gross income related to gaming and gambling losses for federal tax years beginning on or after January 1, 2026.

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## §11-21-9a. Pledge of credit or collateral by endorser, guarantor or accommodator not to constitute investment in borrower.

Any person pledging his credit or collateral as an endorser, guarantor, or accommodator to another person or corporation for the purpose of assisting another in obtaining credit shall not be, or construed to be, an investor in said borrower as to the amount so borrowed, nor shall any payments by said borrower on the indebtedness be, or construed to be, dividend to the endorser, guarantor or accommodator.

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## §11-21-10. Low income exclusion.

(a) Earned income exclusion. -- In the case of an eligible taxpayer, there shall be allowed as a deduction from federal adjusted gross income the amount of his or her earned income included therein, not to exceed $10,000, except that when a husband and wife file separate returns under this article this exclusion shall not exceed $5,000 per separate return: Provided, That for the taxable year beginning January 1, 1996, the exclusion provided for in this section shall apply only to earned income received after June 30, 1996, and the amount excluded shall not exceed fifty percent of the annual low income exclusion amounts set forth in this subsection.

(b) "Eligible taxpayer" defined. -- The term "eligible taxpayer" means:

(1) Any unmarried individual and any husband and wife filing a joint return under this article who has or have federal adjusted gross income of $10,000 or less for the taxable year; or

(2) Any husband or wife filing a separate return under this article who has federal adjusted gross income of $5,000 or less.

(c) "Earned income" defined. --

(1) The term "earned income" means:

(A) Wages, salaries, tips, and other employee compensation; plus

(B) The amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of Section 1402(a) of the Internal Revenue Code), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer under Section 164 of the Internal Revenue Code.

(2) For purposes of this section:

(A) The earned income of an individual shall be computed without regard to any community property laws;

(B) No amount received as pension or annuity shall be taken into account; and

(c) No amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account.

(d) Taxable year must be full taxable year. -- Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowed under this section in the case of a taxable year covering a period of less than twelve months.

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## §11-21-10a. Adoption tax credit.

A one time credit against the tax imposed by the provisions of this article shall be allowed as follows:

Nonfamily adoptions. — For nonfamily adoptions, the credit is equal to $5,000 which may be taken in the year of the adoption of each nonfamily child, whose age at adoption is under eighteen years. This credit may, at the option of the taxpayer, be taken over a period of three years.

For the purpose of this section and credit "nonfamily adoptions" means adoptions of a child or children by a taxpayer or taxpayers who are not the father, mother, or stepparent of the child.

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## §11-21-11. West Virginia taxable income of resident individual.

(a) General. -- The West Virginia taxable income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia personal exemptions, as determined under this part.

(b) Husband and wife. -- (l) If the federal taxable income of husband and wife is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect if they comply with the requirements of the Tax Commissioner in setting forth information on a single form or on separate forms, as may be required by the Tax Commissioner.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the Tax Commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

(c) Effective date. -- This section, as amended by this act, shall apply to all taxable years beginning after December 31, 1986.

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## §11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income, unless already included therein, the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under

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the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first $2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first $2,000 of benefits received under any federal retirement system to which 4 U.S.C. § 111 applies: *Provided, however*, That the total modification under this paragraph shall not exceed $2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7)(A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed Forces of the United States of America with the product thereof multiplied by the first $30,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2000, the first $20,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal



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income tax purposes for the taxable year.

(C) For taxable years beginning after December 31, 2017, military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2017, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year. For taxable years beginning after December 31, 2018, retirement income from the uniformed services, including the Army, Navy, Marines, Air Force, Space Force, Coast Guard, Public Health Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or by this state after December 31, 2018, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year.

(D) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Decreasing modification for social security income.

(A) For taxable years beginning on or after January 1, 2022, 100 percent of the social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq*. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381 *et. seq*., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(B) of this code.

(B) The deduction allowed by §11-21-12(c)(8)(A) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return does not exceed $100,000, or $50,000 in the case of a single individual or a married individual filing a separate return.

(C) For taxable years beginning on and after January 1, 2024, 35 percent of the amount of social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq*. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381 *et. seq*., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

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(D) For taxable years beginning on or after January 1, 2025, 65 percent of the social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq*. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381 *et. seq*., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(E) For taxable years beginning on or after January 1, 2026, 100 percent of the social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq*. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. 1381 *et. seq*., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(F) The deduction allowed by §11-21-12(c)(8)(C), §11-21-12(c)(8)(D), and §11-21-12(c)(8)(E) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return exceeds $100,000, or $50,000 in the case of a single individual or a married individual filing a separate return.

(9) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by any person who has attained the age of 65 on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: *Provided, however*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is $8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of modifications under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

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(10) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is $8,000 or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(11) Contributions from any source to a medical savings account established by or for the individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed $2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of the Internal Revenue Code.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-21-19 of this code.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under §11-21-17 of this code.

(f) Husband and wife. — If 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 adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. –

(1) Changes in the language of this section enacted in the year 2000 shall apply to taxable years beginning after December 31, 2000.

(2) Changes in the language of this section enacted in the year 2002 shall apply to taxable years beginning after December 31, 2002.

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(3) Changes in the language of this section enacted in the year 2019 shall apply to taxable years beginning after December 31, 2018.

(4) Changes in the language of this section enacted in the year 2024 shall apply retroactively to taxable years beginning after December 31, 2023.

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## §11-21-12a. Additional modification reducing federal adjusted gross income.

In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment made under a prepaid tuition contract or other college savings plan administered by the board, pursuant to article thirty, chapter eighteen of this code, is also an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed. The taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the payment was made.

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**§11-21-12b. Combat pay exempt.**

Combat pay received for Desert Shield service, as defined in section sixty-one of this article, which is exempt from federal income tax, under Section 112 of the Internal Revenue code, shall be exempt from the tax imposed by this article.

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## §11-21-12c. Deduction for long-term care insurance.

For taxable years beginning on and after January 1, 2000, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment during the taxable year for premiums for a long-term care insurance policy as defined in section four, article fifteen-a, chapter thirty-three of this code that offers coverage to either the taxpayer, the taxpayer's spouse, parent or a dependent as defined in section 152 of the Internal Revenue Code of 1986, as amended, is an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made.

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## §11-21-12d. Additional modification reducing federal adjusted gross income.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, any person who retires under an employer-provided defined benefit pension plan that terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled had the plan not terminated may subtract annually from his or her federal adjusted income a sum equal to the difference in the amount of the maximum annual pension benefit the person would have received for such tax year had the plan not terminated and the maximum annual pension benefit actually received from the guarantor under a benefit guarantee plan: *Provided*, That if the Tax Commissioner determines that this adjustment reduces the revenues of the state by $2 million or more in any one year, then the Tax Commissioner shall reduce the percentage of the reduction to a level at which the commissioner believes will reduce the cost of the adjustment to $2 million for the next year. This tax adjustment is effective for taxable years beginning on and after January 1, 2008: *Provided, however*, That for the taxable year 2007, the tax adjustment shall be effective and shall apply retroactively: *Provided further*, That the adjustment terminates for the tax years on and after January 1, 2015.

(b) This adjustment shall be effective for tax years beginning on January 1, 2020, and shall terminate for taxable years on and after January 1, 2028.

(c) This modification is available regardless of the type of return form filed.

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## PART II. RESIDENTS.

### §11-21-12e. Additional modification reducing federal adjusted gross income.

(a) For taxable years beginning after December 31, 2000, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, active duty military pay received for the period of time an individual is on active duty as a member of the National Guard or armed forces reserve called to active duty pursuant to an Executive Order of the President of the United States for duty in Operation Enduring Freedom or for domestic security duty is an authorized modification reducing federal adjusted gross income, but only to the extent the active duty military pay is included in federal adjusted gross income for the taxable year in which it is received.

(b) For taxable years beginning after December 31, 2012, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, active duty military pay received by a resident individual who is on active duty for thirty continuous days or more in the armed forces of the United States, the National Guard or armed forces reserve is an authorized modification reducing federal adjusted gross income for the taxable year in which the individual has separated from active military service, but only to the extent the active duty military pay is included in federal adjusted gross income for the taxable year in which it is received.

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## §11-21-12f. Additional modification increasing federal adjusted gross income.

In addition to amounts added to federal adjusted gross income pursuant to subsection (b), section twelve of this article, unless already included in federal adjusted gross income for the taxable year, there shall be added to federal adjusted gross income any amount previously deducted from federal adjusted gross income under section twelve-a of this article for amounts deposited into a prepaid tuition contract or other college savings plan administered by the board of trustees of the college prepaid tuition and savings program, pursuant to article thirty, chapter eighteen of this code and subsequently withdrawn from the prepaid tuition contract or other college savings plan, that was used for purposes other than those qualified expenses authorized by I.R.C. §529. The provisions of this section are effective for taxable years beginning after December 31, 2003.

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**§11-21-12g. Additional modification increasing federal adjusted gross income; disallowance of deduction taken under Internal Revenue Code Section 199.**

(a) In addition to amounts added to federal taxable income pursuant to subsection (b), section twelve of this article, unless already included therein, there shall be added to federal taxable income the amount deducted under Section 199 of the Internal Revenue Code of 1986, as amended, when determining federal adjusted gross income for the taxable year for federal income tax purposes.

(b) When taxpayer's federal adjusted gross income includes distributive share of income, gain or loss of a partnership, limited liability company, electing small business corporation, or other entity treated as a partnership for federal income tax purposes, and when taxpayer's distributive share for the taxable year includes a deduction, or portion of a deduction computed under Section 199 of the Internal Revenue Code, as amended, for the taxable year, then in addition to amounts added to federal taxable income pursuant to subsection (b), section twelve of this article, unless already included therein, taxpayer shall add the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, that flows through to the taxpayer for federal income tax purposes for the taxable year. Taxpayer shall file with its annual return under this article a copy of all schedules K-1 it received showing allocation of a Section 199 deduction and such other information as the Tax Commissioner may require.

(c) Failure to attach required schedules. -– When taxpayer fails to include with the annual return due under this article the schedule or schedules required by this section, the return shall be treated as an incomplete return until the day the required schedule or schedules are filed with the Tax Commissioner. An incomplete return showing an overpayment of tax may not be treated as a claim for refund until the day the defect is cured. The filing of an incomplete return shall not start the running of the period of time during which the Tax Commissioner may issue an assessment or take other action to enforce compliance of this article for the taxable year.

(d) Audit adjustment to federal taxable income. -– When auditing for compliance with this article, the Tax Commissioner may change a taxpayer's computation of federal taxable income or pro forma taxable income to comply with the laws of the United States as in effect for the taxable year and incorporated by reference into this article.

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**§11-21-12h. Repeal of section relating to Additional modification reducing federal adjusted gross income relating to tolls for travel on West Virginia toll roads and paid electronically through use of parkways authority commuter (PAC) cards.**

[Repealed].

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**§11-21-12i. Decreasing modification reducing federal adjusted gross income for qualifying contribution to a qualified trust maintained for the benefit of a child with autism; effective date; sunset date.**

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized in the amount of any qualifying contribution to a qualified trust maintained for the benefit of a child with autism by the parent or guardian of a child with autism, up to a maximum of $1,000 per year for individual filers and persons who are married but filing separately, and $2,000 per year for persons who are married and filing jointly, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed. The taxpayer may elect to carry forward the modification over a period not to exceed four tax years, beginning in the tax year in which the payment was made: *Provided*, That the amount of the decreasing modification, in combination with all other decreasing modifications authorized pursuant to this article, shall in no event reduce taxable income below zero. Any unused decreasing modification carryforward amount remaining after the four-year carryforward period is forfeited. The accrued deposits and earnings on the qualified trust account for a child with autism and the subsequent withdrawal of funds from that trust account, made in accordance with the provisions of §44-16-1 *et seq*. of this code, shall not be treated as taxable income to either the trust or the beneficiary. The provisions of this section are effective for taxable years beginning on and after January 1, 2011.

(b) The following definitions apply to this section:

(1) "Autism" means "autism" as that term is defined in §44-16-1 *et seq*. of this code.

(2) "Child with autism" means "child with autism" as that term is defined in §44-16-1 *et seq*. of this code.

(3) "Guardian" means "guardian" as that term is defined in §44-16-1 *et seq*. of this code.

(4) "Parent" means a "parent" as that term is defined in §44-16-1 *et seq*. of this code.

(5) "Qualified trust for a child with autism" means "qualified trust for a child with autism" as that term is defined in §44-16-1 *et seq*. of this code.

(c) If it appears upon audit or otherwise that any person or entity has taken the decreasing modification allowed under this section and was not entitled to take the decreasing modification, or has withdrawn funds from the qualified trust for a child with autism in a way not consistent with the requirements of §44-16-1 *et seq*. of this code, then an assessment shall be made and the income tax liability of the taxpayer shall be recomputed disallowing the decreasing modification so taken. Such assessment shall not be barred by any statute of limitations otherwise applicable to the tax imposed pursuant to this article. Amended returns

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shall be filed for any tax year for which the decreasing modification was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in §11-10-17 and such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-10-1 *et seq*. of this code.

(d) Married parents who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section in an amount equal to the amount of contributions made by the parents into the trusts, not to exceed $1,000 each.

(e) Joint guardians who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section, in an amount equal to the amount of contributions made by the guardians into the trust, not to exceed $1,000 each.

(f) In the event the parents or guardians of a child with autism, claiming the modification provided under this section, become divorced or legally separated, each party shall be allowed to claim the amount of unused carryforward modification that remains available under this section according to the terms of an agreed property settlement approved by the divorce court which specifically addresses the unused carryforward modification. In the event that no property settlement specifically addressing the unused carryforward modification exists relating to the divorce or legal separation, then any unused carryforward modification remaining at the time of the divorce or legal separation is granted shall be evenly divided between the parties.

(g) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section, all in accordance with the provisions of §29A-3-1 *et seq*. of this code.

(h) The provisions of this section shall sunset, expire, and be of no force and effect for all tax periods beginning on and after January 1, 2027: *Provided*, That qualifying contributions to qualified trusts made on or prior to December 31, 2026, by fulfillment of the requirements of §44-16-2 of this code shall qualify for the decreasing modification and carryforward provisions established by this article.

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## §11-21-12j. Modifications to federal adjusted income.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, any contributions to an account created pursuant to the West Virginia ABLE Act in §16-48-1 et seq. of this code is also an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed and shall not reduce taxable income below zero. The taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the payment was made.

(b) In addition to the amounts authorized to be added to federal adjusted gross income pursuant to §11-21-12(b) of this code, unless already included in federal adjusted gross income for the taxable year, there shall be added to federal adjusted gross income any amount previously deducted from federal adjusted gross income under this section for amounts deposited into an account created pursuant to the West Virginia ABLE Act in §16-48-1 et seq. of this code and subsequently withdrawn from the account for purposes other than a qualified disability expense authorized by the ABLE Act.

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**§11-21-12k. Additional modification reducing federal adjusted gross income for shareholders of S corporations and members of limited liability companies engaged in banking business.**

(a) For taxable years beginning on and after January 1, 2018, the West Virginia adjusted gross income of a taxpayer who is a shareholder of an S corporation, or member of a limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code, as adjusted pursuant to §11-21-12 of this code, shall be further adjusted by multiplying that portion of the taxpayer's West Virginia adjusted gross income attributable to the taxpayer's proportional share of all items of income, loss, deduction or credit of the S corporation, or limited liability company, as shown on the K-1 received by the taxpayer for the tax year, by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances of the S corporation, or limited liability company, during the taxable year (account balances to be determined at cost in the same manner that obligations, investments and loans are reported on Schedule L of Federal Form 1120S, or Schedule L of Form 1065) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;

(B) Obligations or securities of this state and any political subdivision or authority of the state;

(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide located in this state and occupied by nontransients.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the S corporation, or limited liability company, which are shown on Schedule L of Federal Form 1120S, which is filed by the S corporation, or on Schedule L of Federal Form 1065, which is filed by the limited liability company, with the Internal Revenue Service: Provided, That the adjustment allowed herein shall not be made to the extent that the adjustments provided for in this section are otherwise allowed by §11-21-12 of this code and shall not be made to adjusted gross income of a taxpayer who is a shareholder of an S corporation, or a member of a limited liability company, engaged in banking business if the income of the S corporation, or limited liability company, of which the taxpayer is a shareholder, or member, has been adjusted at the S corporation, or limited liability company, level for the tax year.

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(b) Apportionment rules for organizations engaged in business both within and without this state. — For taxable years beginning on and after January 1, 2018, an S corporation, or a limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code, which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in subsection (a) of this section, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (c) of this section.

(c) Special gross receipts factor. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the S corporation, or limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code from sources within this state during the taxable year and the denominator of which is the total gross receipts of the S corporation, or limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in subsection(a) of this section.

(d) Effective date. — The provisions of this section are retroactive with respect to tax years beginning on or after January 1, 2018, the law in effect for each of those years is fully preserved as to those years, except as provided in this section.

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**§11-21-12l. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.**

(a) General. — In addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, a modification reducing federal adjusted gross income is hereby authorized for taxable years beginning on and after January 1, 2019:

(1) For individuals: in an amount equal to and limited to that portion of net income included in federal adjusted gross income by a taxpayer in the taxable year that is directly derived from a qualified opportunity zone business located in a qualified opportunity zone which is located in West Virginia;

(2) For partners or members of limited liability companies that are treated as partnerships for federal income tax purposes, and other pass-through entities: in an amount equal to and limited to that portion of the distributive share of the partner or member that is attributable to the flow through income directly derived from the qualified opportunity zone business located in West Virginia. A similar rule applies to shareholders in corporations taxed under subchapter S of the Internal Revenue Code.

(b) Eligibility. — To be entitled to modification provided for in subsection (a) of this section, the qualified opportunity zone business must be a newly registered business in West Virginia registered on or after January 1, 2019 and before January 1, 2024. Limited liability companies that are treated as corporations for purposes of the federal income tax and West Virginia corporation net income tax and which otherwise qualify in accordance with the requirements and limitations of this section may qualify for the modification authorized under this section.

(c) Duration. — The modification provided for in subsection (a) of this section shall apply with respect to a taxpayer for a 10-year period beginning with the first full taxable year during which the qualified opportunity zone business first qualifies as a qualified opportunity zone business, or the first year in which the qualified opportunity zone business reports net income: Provided, That the qualified opportunity zone business first qualifies as such on or after January 1, 2019.

(d) The following definitions apply to this section:

(1) "Internal Revenue Code" means the Internal Revenue Code of the United States as defined in §11-21-9 or §11-24-3 of this code.

(2) "Newly registered business" means a business that is formed on or after January 1, 2019 and before January 1, 2024, that is first required to obtain a business registration certificate under §11-12-1 et seq. of this code from the Tax Commissioner on or after January 1, 2019 and before January 1, 2024, and which is not the reorganization of a business that existed prior to January 1, 2019.

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(3) "Reorganization of an existing business" includes, but is not limited to, a change in the name of a business, a change in the form of doing business such as, but not limited to, a proprietorship that reorganizes as a partnership or other business entity, a subsidiary that becomes a stand-alone business entity, a division of an existing business that becomes a separate business and any other similar type of business reorganization. For purposes of this definition any entity or organization that is determined by the Tax Commissioner to be an alter ego, nominee or instrumentality of an existing or previously existing business, as determined in accordance with the criteria specified in §11-12-5 of this code is a business resulting from reorganization of an existing business.

(4) "Qualified Opportunity Zone Business" means Qualified Opportunity Zone Business as that term is defined in Section §1400Z-2 of the Internal Revenue Code.

(5) "Qualified Opportunity Zone" means Qualified Opportunity Zone as that term is defined in Section 1400Z-1 of the Internal Revenue Code.

(e) Rules. — The Tax Commissioner may propose legislative rules, or promulgate interpretive or procedural rules, as the commissioner deems necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section. All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

(f) Effective date; expiration of modification, preservation of entitlement. — The modification authorized by this section becomes effective and is authorized for taxable years beginning on and after January 1, 2019: Provided, That unless sooner terminated by law, the modification authorized by this section will terminate for taxable years beginning on and after January 1, 2024, and no new entitlement to the modification is authorized thereafter; Provided however, That those taxpayers shall retain that entitlement for the remainder of the 10-year application period over which the original entitlement applies, if the Taxpayer otherwise remains in compliance with the requirements of this section.

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**§11-21-12m. Additional modifications related to a Jumpstart Savings Account.**

(a) Modification for contributions. —

(1) For taxable years beginning on or after January 1, 2022, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to a West Virginia taxpayer's contribution to a Jumpstart Savings Account for the taxable year in which the payment is made, in accordance with §18-30A-1 *et seq*. of this code, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed $25,000 in a single taxable year: *Provided*, That the taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the contribution was made.

(b) Decreasing modification for qualified distributions not deductible from federal adjusted gross income. —

(1) For taxable years beginning on or after January 1, 2022, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to the entire amount of a distribution from a Jumpstart Savings Account received by a distributee that is used to pay for qualified expenses described in §18-30A-3(a)(11)(D) of this code. Such decreasing modification is authorized for the taxable year the distribution is made to the distributee, but only to the extent the distribution amount is not allowable as a deduction when arriving at the distributee's federal adjusted gross income for the taxable year when the distribution was made. Any decreasing modification applied by a distributee shall be subject to disallowance to the extent that the distributed moneys are not used to pay for qualified expenses, as defined in §18-30A-3(a)(11)(D) of this code in the taxable year of receipt of the distribution or the next succeeding taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed $25,000 for the taxable year.

(c) Increasing modification for distributions not used for qualified expenses. — For taxable years beginning on or after January 1, 2023, there shall be added to the federal adjusted gross income of a distributee, unless already included in federal adjusted gross income for the taxable year, any amount previously applied to a decreasing modification of federal adjusted gross income pursuant to subsection (a) of this section for any amount contributed to a Jumpstart Savings Account, that is subsequently withdrawn from said account and not used for qualified expenses in the taxable year of receipt of the distribution or the next succeeding taxable year.

(d) Modification for rollover of certain distributions. — A modification reducing federal adjusted gross income is hereby authorized for the account owner, to the extent that the

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amount is not allowable as a deduction when arriving at the account owner's federal adjusted gross income, in the amount as follows:

(1) An amount equal to a distribution from a Jumpstart Savings Account received in the taxable year, if the account owner deposits such amount into a West Virginia ABLE Account within 30 days of receiving the distribution, according to the requirements of §18-30A-1 *et seq*. of this code; and

(2) An amount equal to the portion of a distribution received in the taxable year from a college savings account, established pursuant to §18-30-1 *et seq*. of this code, if the taxpayer deposits the amount into a Jumpstart Savings Account within 30 days of receiving the distribution according to the requirements of §18-30A-1 *et seq*. of this code.

(e) Nothing in this section shall be construed to decrease or otherwise impact any person's federal tax obligations or to authorize any act which violates federal law.

(f) Definitions. — For the purposes of this section:

"Distributee" means the person who is authorized to receive distributions from a Jumpstart Savings Account, according to §18-30A-1 *et seq*. of this code and the legislative rules and procedures adopted by the Board of Trustees of the West Virginia College and Jumpstart Savings Programs.

"Qualified expense" has the meaning provided in §18-30A-3 of this code.

(g) The modifications authorized in this section are authorized in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12 of this code.

(h) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

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## §11-21-12n. Additional modification reducing federal adjusted gross income related to gaming and gambling losses.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12, a modification reducing federal adjusted gross income is hereby authorized for taxable years beginning on and after January 1, 2020. When calculating income from West Virginia gaming activity and West Virginia gambling activity for the taxable year, the taxpayer may apply a decreasing modification against West Virginia adjusted gross income in the amount of West Virginia gaming and gambling losses allowable as an itemized deduction under the United States Internal Revenue Code, not to exceed the amount of West Virginia gaming and gambling winnings, for that year: *Provided*, That this decreasing modification may not include costs and expenses incurred in connection with the gaming or gambling activity: *Provided further*, That the taxpayer may amend previously filed returns for the 2020, 2021, and 2022 tax years to recognize this decreasing modification. Based on such amended returns as specified herein, any fines, assessments, penalties, or interest levied thereon are void, and returnable to the taxpayer.

(b) The following gaming and gambling losses are not subject to this decreasing modification:

(1) Gaming and gambling losses that have been applied as a deduction in determining the taxpayer's federal adjusted gross income; and

(2) Gaming and gambling losses incurred in any unlawful gambling activity.

(c) The taxpayer shall maintain detailed records substantiating losses if the taxpayer intends to apply the decreasing modification allowable under this section for those losses. The taxpayer shall have the burden of proving any loss.

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**§11-21-12o. Additional modifications related to voluntary portable benefits plans.**

(a) Modification for contributions. — For taxable years beginning on or after January 1, 2026, in addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code there shall be subtracted an amount equal to a West Virginia taxpayer's contribution to a voluntary portable benefits plan for the taxable year in which the payment is made, in accordance with §21-18-1 *et seq*. of this code, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year.

(b) Modification for recipients. — For taxable years beginning on or after January 1, 2026, in addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code there shall be subtracted an amount equal to a West Virginia taxpayer's receipt of a contribution to a voluntary portable benefits plan for the taxable year in which the payment is made, in accordance with §21-18-1 *et seq*. of this code, but only to the extent the amount is includable when arriving at the taxpayer's federal adjusted gross income for the taxable year.

WV Legislature

## §11-21-13. West Virginia deduction of resident individual.

The West Virginia deduction of a resident individual shall be his West Virginia standard deduction unless he elects to deduct his West Virginia itemized deduction under the conditions set forth in section fifteen: Provided, That no West Virginia deduction shall be allowed for taxable years beginning after December 31, 1986.

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## §11-21-14. West Virginia standard deduction of a resident individual.

(a) General. -- The West Virginia standard deduction of a resident individual, or of husband and wife whose West Virginia taxable income is determined jointly, shall be ten per centum of West Virginia adjusted gross income or $1,000, whichever is less.

(b) Husband and wife determining income separately. -- The West Virginia standard deductions of husband and wife whose West Virginia taxable incomes are determined separately (whether or not on a single form) shall not exceed ten per centum of the aggregate of their separate West Virginia adjusted gross incomes or $1,000, whichever is less, but may be taken by either or divided between them in such proportions as they may elect.

(c) Expiration. -- The West Virginia standard deduction provided in this section shall not apply to taxable years beginning after December 31, 1986.

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## §11-21-15. West Virginia itemized deduction of a resident individual.

(a) General. -- If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Husband and wife. -- (1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose West Virginia taxable incomes are determined separately, may be taken by either or divided between them in such proportions as they may elect.

(c) Modifications reducing federal itemized deductions. -- The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) Income taxes imposed by this state or any other taxing jurisdiction; and

(2) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article.

(d) Partners. -- The amounts of modifications under subsection (c) required to be made by a partner with respect to items of deduction of a partnership shall be determined under section seventeen.

(e) Expiration. -- The West Virginia itemized deduction provided in this section shall not apply to taxable years beginning after December 31, 1986.

WV Legislature

## §11-21-16. West Virginia personal exemptions of resident individual.

(a) General. -- For any tax imposed under the provisions of this article with respect to any taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia exemption of $600 for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes. With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1, 1984, said exemption shall be $700; with respect to any taxable year beginning on or after January 1, 1984, said exemption shall be $800; and with respect to any taxable year beginning on or after January 1, 1987, said exemption shall be $2,000.

(b) Husband and wife. -- If the West Virginia income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled, with respect to any taxable year prior to January 1, 1983, to a West Virginia exemption of $600 for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns. With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1, 1984, said exemption shall be $700; with respect to any taxable year beginning on or after January 1, 1984, said exemption shall be $800; and with respect to any taxable year beginning on or after January 1, 1987, said exemption shall be $2,000.

(c) Surviving spouse. -- For taxable years beginning after December 31, 1986, a surviving spouse shall be allowed one additional exemption of $2,000 for the two taxable years beginning after the year of death of the deceased spouse.

For purposes of this section and section twelve of this article, a surviving spouse means a taxpayer whose spouse died during the taxable year prior to the taxable year for which the annual return is being filed and who has not remarried at any time before the end of the taxable year for which the annual return is being filed.

(d) Certain dependents. -- Notwithstanding any provisions in this section, for taxable years beginning after December 31, 1986, a resident individual whose exemption amount for federal tax purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986, shall be allowed a single West Virginia exemption in the amount of $500.

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## §11-21-17. Resident partners.

(a) Partner's modifications. — In determining West Virginia adjusted gross income and West Virginia taxable income of a resident partner, any modification described in §11-21-12(b), §11-21-12(c), §11-21-12(d), or §11-21-12j of this code, which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the items to which the modifications relate. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be his or her distributive share for federal income tax purposes of partnership taxable income or loss generally.

(b) Character of items. — Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this article as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) West Virginia tax avoidance or evasion. — Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this article, the partner's distributive share of such item, and any modification required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

(d) Partnership defined. – For purposes of this article, "partnership" means a partnership as defined in §11-21A-1 of this code.

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## §11-21-17a. Resident shareholders of S corporations.

(a) S corporation shareholder's modifications. — In determining West Virginia adjusted gross income and West Virginia taxable income of a resident S corporation shareholder, any modification described in §11-21-12(b), §11-21-12(c), §11-21-12(d), or §11-21-12j of this code, which relates to an item of income, gain, loss or deduction shall be made in accordance with the S corporation shareholder's pro rata share, for federal income tax purposes, of the items to which the modifications relate. Where a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the shareholder's pro rata share of such item shall be his or her pro rata share for federal income tax purposes of S corporation taxable income or loss generally.

(b) Character of items. — Each item of S corporation income, gain, loss or deduction shall have the same character for a shareholder under this article as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a shareholder as if realized directly from the source from which realized by the S corporation, or incurred in the same manner as incurred by the S corporation.

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**§11-21-18. West Virginia taxable income of resident estate or trust.**

The West Virginia taxable income of a 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) means its federal taxable income for the taxable year as defined in the laws of the United States and section nine of this article §11-21-9 of this code for the taxable year, with the following modifications:

(1) There shall be subtracted $600 as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be added or subtracted, as the case may be, the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen of this article §11-21-19 of this code.

(3) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes: *Provided*, That the provisions of this subdivision shall first be effective for taxable years beginning after December 31, 1990.

(4) There shall be added by an electing small business trust as defined in Section 1361(e) of the Internal Revenue Code of 1986, as amended, which is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641 of the Internal Revenue Code of 1986, as amended.

(b) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

WV Legislature

## §11-21-19. Share of resident estate, trust or beneficiary in West Virginia fiduciary adjustment.

(a) General. -- An adjustment shall be made in determining West Virginia taxable income of a resident estate or trust under section eighteen, or West Virginia adjusted gross income of a resident beneficiary of any estate or trust under section twelve (d), in the amount of the share of each in the West Virginia fiduciary adjustment as determined in this section.

(b) Definition. -- The West Virginia fiduciary adjustment shall be the net amount of the modifications described in section twelve (b), (c) and (d), and section fifteen (c) which relate to items of income, gain, loss or deduction of an estate or trust. Such net amount shall not include any modification described in section twelve (c) (3), with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from distributable net income of the estate or trust for federal income tax purposes.

(c) Shares of West Virginia fiduciary adjustment. -- (1) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the West Virginia fiduciary adjustment shall be in proportion to their respective shares of distributable net income of the estate or trust for federal income tax purposes.

(2) If the distributable net income for the taxable year of the estate or trust is zero, the share of each beneficiary in the West Virginia fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is distributed within such year, or is required to be distributed currently. Any balance of the West Virginia fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate attribution of modifications. -- The Tax Commissioner may, on application, authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as he may require.

WV Legislature

## §11-21-20. Credit for income tax of another state.

(a) General. — A resident shall be allowed a credit against the tax otherwise due under this article for any income tax paid to another state of the United States or by the District of Columbia for the taxable year, either directly paid by the individual or paid by a pass-through entity in accordance with §11-21-3a of this code and passed through by the entity to the individual taxpayer, upon income both derived therefrom and subject to tax under this article. As used in this subsection, "pass-through entity tax" refers to a state net income tax imposed by another state on a pass-through entity that is substantially similar to the tax imposed by §11-21-3a of this code. Solely for purposes of this section, an owner of a pass-through entity shall be considered liable for tax paid to another state by the pass-through entity pursuant to a pass-through entity tax imposed by the state (whether elected or otherwise) in an amount equal to that portion of the pass-through entity tax representing the owner's share of the pass-through entity's income subject to the tax, and the owner shall be considered to have paid that portion of the tax paid by the pass-through entity. The owner of a pass-through entity shall also be considered liable for and to have paid state income taxes to another state paid by the pass-through entity on behalf of an owner through withholding, a composite return, or otherwise. If an owner receives a refund or credit for overpayment of all or part of a pass-through entity tax imposed by another state, the amount paid by the owner shall be reduced by the refund or credit.

(b) Limitations. — (1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by such other jurisdiction by the total amount of the taxpayer's West Virginia income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's West Virginia income.

(c) Exception. — No credit shall be allowed under this section for a tax of a jurisdiction which allows residents of this state a credit against the taxes imposed by such other jurisdiction for the tax under this article, if such other credit is substantially similar to the credit granted by §11-21-40 of this code.

(d) Definition. — For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual;

(2) The amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his or her West Virginia adjusted gross income under §11-21-12 of this code; or

(3) The taxable income of an electing pass-through entity for which election is made and determined in accordance with §11-21-3a of this code.

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(e) Effective date. — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022.

WV Legislature

## §11-21-21. Senior citizens' tax credit for property tax paid on first $20,000 of taxable assessed value of a homestead in this state.

(a) Allowance of credit. --

(1) A low-income person who is allowed a $20,000 homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem property taxes paid on up to the first $10,000 of taxable assessed value of the homestead for property tax years that begin on or after January 1, 2003, except as provided in subdivision (2) of this subsection.

(2) For tax years beginning on or after January 1, 2007, a low-income person who is allowed a $20,000 homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem property taxes paid on up to the first $20,000 of taxable assessed value of the homestead for property tax years that begin on or after January 1, 2007: Provided, That for tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section.

(3) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than $10.

(4) The credit for each property tax year shall be claimed by filing a claim for refund within three years after the due date for the personal income tax return upon which the credit is first available.

(b) Terms defined. --

For purposes of this section:

(1) "Low income" means federal adjusted gross income for the taxable year that is one hundred fifty percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined annually by the United States Secretary of Health and Human Services.

(2) (A) For tax years beginning before January 1, 2007, "taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against not more than $10,000 of the taxable assessed value of a homestead that are paid during the calendar year determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after January 1, 2003, except as provided in paragraph (B) of this subdivision.

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(B) For tax years beginning on or after January 1, 2007, "taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against not more than $20,000 of the taxable assessed value of a homestead that are paid during the calendar year determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after January 1, 2007.

(c) Legislative rule. --

The Tax Commissioner shall propose a legislative rule for promulgation as provided in article three, chapter twenty-nine-a of this code to explain and implement this section.

(d) Confidentiality. --

The Tax Commissioner shall utilize property tax information in the statewide electronic data processing system network to the extent necessary for the purpose of administering this section, notwithstanding any provision of this code to the contrary.

(e) For tax years beginning on or after January 1, 2012, taxpayers must calculate the credit authorized in this section prior to calculating the credit authorized in section twenty-three of this article.

WV Legislature

## §11-21-22. Low-income family tax credit.

In order to eliminate West Virginia personal income tax on families with incomes below the federal poverty guidelines and to reduce the West Virginia personal income tax on families with incomes that are immediately above the federal poverty guidelines, there is hereby created a nonrefundable tax credit, to be known as the low-income family tax credit, against the West Virginia personal income tax. The low-income family tax credit is based upon family size and the federal poverty guidelines. The low-income tax credit reduces the tax imposed by the provisions of this article on families with modified federal adjusted gross income below or near the federal poverty guidelines: Provided, That for tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section.

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## §11-21-22a. Definitions.

When used in this section and sections twenty-two, twenty-two-b and twenty-two-c of this article, the following terms shall have the meaning ascribed herein, unless a different meaning is clearly provided by the context in which the term is used.

(a) "Federal poverty guidelines" means the U. S. Department of Health and Human Services poverty guidelines updated periodically in the Federal Register under the authority of 42 U. S. C. §9902(c) and available each year on June 30.

(b) "Family size" means the total number of exemptions that may be legally claimed on the West Virginia resident personal income tax return for the taxable year for which the tax credit is claimed: Provided, That family size shall not include the additional exemption that may be claimed by a surviving spouse pursuant to subsection (c), section sixteen of this chapter: Provided, however, That if the total number of exemptions that may be legally claimed on the West Virginia resident personal income tax return for the taxable year for which the tax credit is claimed exceeds eight, the family size shall be deemed eight.

(c) "Indexed tax credit tables" means the two tables annually developed and published by the Tax Commissioner pursuant to the requirements of section twenty-two-b of this article.

(d) "Modified federal adjusted gross income" means the federal adjusted gross income plus any applicable increasing West Virginia modifications plus any tax exempt interest income reported on the federal tax return.

(e) "Qualified taxpayer" means a taxpayer:

(1) Who files the West Virginia personal income tax return required by this article;

(2) Who files as an individual, as a head of household, as a husband and wife who file a joint return, as an individual entitled to file as a surviving spouse, or as a husband and wife who file separate returns; and

(3) Whose modified federal adjusted gross income does not exceed:

(A) The federal poverty guidelines amount for the family size of the taxpayer plus $2,700 for those taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint return, or as an individual entitled to file as a surviving spouse; or

(B) Fifty percent of the federal poverty guidelines amount for the family size of the taxpayer plus $1,350 for those taxpayers who are husband and wife and who file separate returns.

(f) "Tax credit" means the low-income family tax credit authorized by this article.

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**§11-21-22b. Amount of credit.**

(a) For each taxable year beginning on or after January 1, 2007, the tax credit authorized by section twenty-two of this article may be used by every qualified taxpayer and shall be calculated in accordance with subsections (b) and (c) of this section: Provided, That for the taxable year beginning on January 1, 2007, the qualified taxpayer shall be allowed to claim only fifty percent of the amount of the tax credit.

(b) Qualified taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint return, or as an individual entitled to file as a surviving spouse shall be entitled to a tax credit based on the following:

(1) If modified federal adjusted gross income is at or below the federal poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax owed under this article by the qualified taxpayer;

(2) If modified federal adjusted gross income is greater than the federal poverty guidelines but does not exceed $300 above the federal poverty guidelines based on family size, the amount of credit allowable shall be ninety percent of the amount of tax owed under this article by the qualified taxpayer;

(3) If modified federal adjusted gross income is greater than $300 above the federal poverty guidelines but does not exceed $600 above the federal poverty guidelines based on family size, the amount of credit allowable shall be eighty percent of the amount of tax owed under this article by the qualified taxpayer;

(4) If modified federal adjusted gross income is greater than $600 above the federal poverty guidelines but does not exceed $900 above the federal poverty guidelines based on family size, the amount of credit allowable shall be seventy percent of the amount of tax owed under this article by the qualified taxpayer;

(5) If modified federal adjusted gross income is greater than $900 above the federal poverty guidelines but does not exceed $1,200 above the federal poverty guidelines based on family size, the amount of credit allowable shall be sixty percent of the amount of tax owed under this article by the qualified taxpayer;

(6) If modified federal adjusted gross income is greater than $1,200 above the federal poverty guidelines but does not exceed $1,500 above the federal poverty guidelines based on family size, the amount of credit allowable shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;

(7) If modified federal adjusted gross income is greater than $1,500 above the federal poverty guidelines but does not exceed $1,800 above the federal poverty guidelines based on family size, the amount of credit allowable shall be forty percent of the amount of tax owed under this article by the qualified taxpayer;

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(8) If modified federal adjusted gross income is greater than $1,800 above the federal poverty guidelines but does not exceed $2,100 above the federal poverty guidelines based on family size, the amount of credit allowable shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;

(9) If modified federal adjusted gross income is greater than $2,100 above the federal poverty guidelines but does not exceed $2,400 above the federal poverty guidelines based on family size, the amount of credit allowable shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer; or

(10) If modified federal adjusted gross income is greater than $2,400 above the federal poverty guidelines but does not exceed $2,700 above the federal poverty guidelines based on family size, the amount of credit allowable shall be ten percent of the amount of tax owed under this article by the qualified taxpayer.

(c) Qualified taxpayers who are husband and wife and who file separate returns shall be entitled to a tax credit based on the following:

(1) If modified federal adjusted gross income is at or below fifty percent of the federal poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax owed under this article by the qualified taxpayer;

(2) If modified federal adjusted gross income is greater than fifty percent of the federal poverty guidelines but does not exceed $150 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be ninety percent of the amount of tax owed under this article by the qualified taxpayer;

(3) If modified federal adjusted gross income is greater than $150 above fifty percent of the federal poverty guidelines but does not exceed $300 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be eighty percent of the amount of tax owed under this article by the qualified taxpayer; (4) If modified federal adjusted gross income is greater than $300 above fifty percent of the federal poverty guidelines but does not exceed $450 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be seventy percent of the amount of tax owed under this article by the qualified taxpayer;

(5) If modified federal adjusted gross income is greater than $450 above fifty percent of the federal poverty guidelines but does not exceed $600 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be sixty percent of the amount of tax owed under this article by the qualified taxpayer;

(6) If modified federal adjusted gross income is greater than $600 above fifty percent of the federal poverty guidelines but does not exceed $750 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;

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(7) If modified federal adjusted gross income is greater than $750 above fifty percent of the federal poverty guidelines but does not exceed $900 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be forty percent of the amount of tax owed under this article by the qualified taxpayer;

(8) If modified federal adjusted gross income is greater than $900 above fifty percent of the federal poverty guidelines but does not exceed $1,050 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;

(9) If modified federal adjusted gross income is greater than $1,050 above fifty percent of the federal poverty guidelines but does not exceed $1,200 above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer; or

(10) If modified federal adjusted gross income is greater than $1,200 above fifty percent of the federal poverty guidelines but does not exceed $1,350 above fifty percent of the federal poverty guidelines based on family size, the amount of credit shall be ten percent of the amount of tax owed under this article by the qualified taxpayer.

(d) The Tax Commissioner shall develop and publish on an annual basis two indexed tax credit tables. One tax table shall be for qualified taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint return, or as an individual entitled to file as a surviving spouse and one tax table shall be for qualified taxpayers who are husband and wife and who file separate returns. The indexed tax credit tables shall be based on subsections (b) and (c) of this section.

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**§11-21-22c. Administration.**

The Tax Commissioner may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the administration of the provisions of sections twenty-two, twenty-two-a and twenty-two-b of this article, file administrative notices in the state Register in accordance with section three, article two, chapter twenty-nine-a of this code, and develop and publish any instructions, any or all of which as may be determined to be necessary to provide to taxpayers guidance and assistance when claiming this tax credit.

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**§11-21-23. Refundable credit for real property taxes paid in excess of four percent of gross household income.**

(a) For the tax years beginning on or after January 1, 2008, any homeowner living in his or her homestead shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of real property taxes paid in excess of four percent of gross household income: Provided, That for the tax years beginning on or after January 1, 2012, any low income homeowner living in his or her homestead in this state shall be allowed a refundable credit against the taxes imposed by this article equal to the amount by which the difference between West Virginia real property taxes paid for the tax year, minus the amount of credit authorized in section twenty-one of this article, exceeds four percent of the taxpayer's gross household income for the tax year, as determined for purposes of this article. If the refundable credit provided in this section exceeds the amount of taxes imposed by this article, the state Tax Department shall refund that amount to the homeowner.

(b) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than $10.

(c) The credit for each property tax year shall be claimed by filing a claim for refund within twelve months after the real property taxes are paid on the homestead.

(d) For the purposes of this section:

(1) "Gross household income" is defined as federal adjusted gross income plus the sum of the following:

(A) Modifications in subsection (b), section twelve of this article increasing federal adjusted gross income;

(B) Federal tax-exempt interest reported on federal tax return;

(C) Workers' compensation and loss of earnings insurance; and

(D) Nontaxable Social Security benefits; and

(2) For the tax years beginning before January 1, 2008, "real property taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against the homestead that are paid during the calendar year and determined after any application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for property tax years that begin on or after January 1, 2008.

(e) A homeowner is eligible to benefit from this section or section twenty-one of this article, whichever section provides the most benefit as determined by the homeowner. No homeowner may receive benefits under both this section and section twenty-one of this article during the same taxable year: Provided, That for tax years beginning on or after January 1, 2012, a homeowner may take the credit provided in this section in addition to the

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credit provided in section twenty-one of this article, to be calculated as provided in subsection (a) of this section. For tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section. Nothing in this section denies those entitled to the homestead exemption provided in section three, article six-b of this chapter.

(f) No homeowner may receive a refundable tax credit imposed by this article in excess of $1,000. This amount shall be reviewed annually by the Legislature to determine if an adjustment is necessary.

(g) For tax years commencing on or after January 1, 2012, no credit may be taken under this section for any homestead which is owned, in whole or in part, by any person who is not a low income person.

(h) Terms defined. -- For purposes of this section:

(1) The definitions set forth in section twenty-four of this article apply for purposes of this section.

(2) "Low income" means federal adjusted gross income for the tax year that is three hundred percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined annually by the United States Secretary of Health and Human Services.

(3) A "low income person" means a person whose federal adjusted gross income for the tax year meets the definition of "low income" as defined in this subsection.

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## §11-21-24. Senior citizen property tax relief credit for tax years beginning before 2012.

(a) Definitions. -- As used in this section, the following terms shall have the meaning ascribed to them in this subsection, unless the context in which the term is used clearly requires a different meaning or a specific different definition is provided:

(1) "Assessed value" means the value of property as determined under article three of this chapter.

(2) "Real property taxes paid" means, for the tax years beginning on or after January 1, 2009, the aggregate of regular levies, excess levies and bond levies extended against the homestead that are paid during the calendar year and determined after any application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes.

(3) "Senior citizen property tax relief tax credit" means the tax credit authorized under this section.

(4) "Gross household income" means gross household income as defined in section twenty-three of this article.

(5) "Homestead" means a homestead qualified for the homestead property tax exemption authorized in article six-b of this chapter, but limited to a single-family residential house, including a mobile or manufactured or modular home, and the land, not exceeding one acre, surrounding such structure that is owned by the owner of the single-family residential house, including a mobile or manufactured or modular home; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned by another.

(6) "Owner" or "homeowner" means the person who is possessed of the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust shall be considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title shall also be considered the owner. Personal property mortgaged or pledged shall, for the purpose of taxation, be considered the property of the party in possession.

(7) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before June 30 following the July 1 assessment day.

(8) "Tax increment" means the increase of ad valorem taxes assessed on the homestead, determined as the difference between the ad valorem taxes assessed on the homestead for the current tax year and the ad valorem taxes assessed on the homestead for the tax year immediately preceding the tax year for which the taxpayer's application for tax credit specified in this section is approved by the assessor, or otherwise finally approved in

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accordance with the provisions of this article.

(9) "Tax year" means the property tax calendar year following the July 1 assessment day.

(10) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than six consecutive months of the calendar year prior to the date of application by the owner thereof; and that subsequent to making application for tax credit, the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use.

(b) Refundable credit. -- Subject to the requirements and limitations of this section, for the tax years beginning on or after January 1, 2009, any homeowner having a gross household income equal to or less than $25,000 for the tax year, living in his or her homestead shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of real property taxes paid that are attributable to the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead: Provided, That the gross household income shall be adjusted annually in accordance with the consumer price index. The credit shall be applied against the personal income tax in the personal income tax year of the taxpayer when the property tax increment was actually paid.

(1) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than $10.

(2) The credit for each property tax year shall be claimed by filing a claim for refund within twelve months after the real property taxes are paid on the homestead.

(3) Notwithstanding the provisions of section twenty-one or section twenty-three of this article, for property tax years that begin on or after January 1, 2009, a homeowner is eligible to benefit from this section, section twenty-one or twenty-three of this article, whichever section provides the most benefit as determined by the homeowner. No homeowner may receive benefits under this section, section twenty-one or twenty-three of this article during the same taxable year. Nothing in this section shall be interpreted to deny any lawfully entitled taxpayer of the homestead exemption provided in section three, article six-b of this chapter.

(4) No tax credit shall be allowed under this section for tax years beginning on or after January 1, 2012: Provided, That the definitions set forth in this section shall continue to apply for purposes of section twenty-three of this article.

(c) Qualification for credit. --

(1) The following homesteads shall qualify for the tax credit provided in this section:

(A) Any homestead owned by an owner sixty-five years of age or older and used and occupied exclusively for residential purposes by such owner; and

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(B) Any homestead that:

(i) Is owned by an owner sixty-five years of age or older who, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility;

(ii) Was most recently used and occupied exclusively for residential purposes by the owner or the owner's spouse; and

(iii) Has been retained by the owner for noncommercial purposes.

(2) (A) For tax years commencing on or after January 1, 2009, the owner of a homestead meeting the qualifications set forth in subdivision (1) of this subsection may apply for a tax credit in the amount of the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead, subject to the limitations set forth in this section: Provided, That the tax credit may be authorized only when the tax increment is the greater of $300 or ten percent or more.

(B) In lieu of the tax credit authorized under this section, a taxpayer entitled to such credit may elect to instead apply the deferment of the tax increment authorized pursuant to article six-h of this chapter. Any taxpayer making such election shall be fully subject to the terms and limitations set forth in article six-h of this chapter.

(d) Application for tax credit; renewals; waiver of tax credit. --

(1) General. -- No tax credit may be allowed under this section unless an application for tax credit is filed with the assessor of the county in which the homestead is located, on or before November 1 following mailing of the tax ticket in which the tax increment that is the subject of the application is contained, such tax ticket being mailed pursuant to section eight, article one, chapter eleven-a of this code. In the case of sickness, absence or other disability of the owner, the application may be filed by the owner or his or her duly authorized agent.

(2) Renewals. -- After the owner has filed an application for tax credit with his or her assessor, there shall be no need for that owner to refile an application for the tax credit. However, the taxpayer shall in all cases be required to file a personal income tax return in order to claim the credit in any tax year.

(e) Determination; notice of denial of application for tax credit. --

(1) The assessor shall, as soon as practicable after an application for tax credit is filed, review that application and either approve or deny it. If the application is denied, the assessor shall promptly, but not later than January 1, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county commission, should the owner desire to take an appeal. The notice required or authorized by this section shall be served on the owner or his or her authorized representative either by personal service or by certified mail. The assessor shall approve or disapprove an application

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for tax credit within thirty days of receipt. Any application not approved or denied within thirty days is deemed approved.

(2) In the event that the assessor has information sufficient to form a reasonable belief that an owner, after having been originally granted a tax credit, is no longer eligible for the tax credit, he or she shall, within thirty days after forming this reasonable belief, revoke the tax credit and serve the owner with written notice explaining the reasons for the revocation and furnish a form for filing with the county commission should the owner desire to take an appeal.

(f) Appeals procedure. --

(1) Notice of appeal; thirty days. -- Any owner aggrieved by the denial of his or her claim for application for tax credit or the revocation of a previously approved tax credit may appeal to the county commission of the county within which the property is situated. All such appeals shall be filed within thirty days after the owner's receipt of written notice of the denial of an application or the revocation of a previously approved tax credit, as applicable, pursuant to subsection (e) of this section.

(2) Review; determination; appeal. -- The county commission shall complete its review and issue its determination as soon as practicable after receipt of the notice of appeal, but in no event later than February 28 following the tax year for which the tax credit was sought. In conducting its review, the county commission may hold a hearing on the application. The assessor or the owner may apply to the circuit court of the county for review of the determination of the county commission in the same manner as is provided for appeals from the county commission in section twenty-five, article three of this chapter.

(g) Termination of tax credit. --

(1) Any tax credit approved in accordance with the provisions of this section shall terminate immediately when any of the following events occur:

(A) The death of the owner of the property for which the tax credit was authorized;

(B) The sale of the property for which the tax credit was approved; or

(C) A determination by the assessor that the property for which the tax credit was approved no longer qualifies for the tax credit in accordance with the provisions of this section.

(h) Forms, instructions and regulations. -- The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section. Additionally, the Tax Commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as the Tax Commissioner considers necessary for the implementation of this section.

(i) Criminal penalties; restitution. --



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(1) False or fraudulent claim for tax credit. -- Any owner who willfully files a fraudulent application for tax credit and any person who knowingly assisted in the preparation or filing of such fraudulent application for tax credit or who knowingly supplied information upon which the fraudulent application for tax credit was prepared or allowed is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250 nor more than $500, or imprisoned in jail for not more than one year, or both fined and imprisoned.

(2) In addition to the criminal penalties provided above, upon conviction of any of the above offenses, the court shall order that the defendant make restitution unto this state for all taxes not paid due to an improper tax credit, or continuation of a tax credit, for the owner and interest thereon at the legal rate until paid.

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**§11-21-25. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.**

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed against the tax liability imposed under this article of a qualified employer, for a matching contribution made to a Jumpstart Savings Account in the taxable year, if the account owner is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq*. of this code and the following:

(1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.

(2) The credit allowed by this section may not exceed $5,000 per employee per taxable year.

(3) The amount of the credit may not exceed the portion of the contribution that is attributable to the employer and that would otherwise be derived by the employer as income from his or her business for the taxable year.

(4) The employer may not claim the credit if the employer himself or herself is the account owner or beneficiary of the account to which the matching contribution was made.

(5) The employer may not claim a credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

(6) The employer may not claim both the credit and a decreasing modification authorized by §11-21-12m of this code for an amount contributed to an employee's account.

(b) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, and the Tax Commissioner, upon making the contribution.

(c) Conduit Entities and Proprietorships Personal Income Taxes. —

(1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, the credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.

(2) If the employer directly contributing an amount to a Jumpstart Savings Account is a sole proprietor, the credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the income of the sole proprietor attributable to the business.

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(3) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(4) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(5) The credit allowed under this section must be used in the tax year in which the contribution is made. The credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any unused amount of the credit is forfeited.

(d) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

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## §11-21-26 – Child and dependent care credit.

For tax years beginning on and after January 1, 2024, a person who is allowed a federal tax credit for child and dependent care pursuant to 26 U.S.C. § 21 is also allowed a nonrefundable credit against the tax imposed by §11-21-1 *et seq* of this code. The amount of the credit allowed to the person claiming the credit under this section is 50 percent of the federal child and dependent care tax credit allowed to the person under the provisions of 26 U.S.C. § 21. This section shall have retrospective effect to apply to taxable years beginning on and after January 1, 2024.

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**§11-21-27.**

Reserved for future use.

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**§11-21-28.**

Reserved for future use.

WV Legislature

**§11-21-29.**

Reserved for future use.

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**§11-21-30. Computation of tax on income of nonresidents and part-year residents.**

(a) Computation of tax. — For taxable years beginning after December 31, 1991, the tax due under this article on taxable income derived from sources in this state by a nonresident individual, 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) or by a part-year resident individual shall be calculated as provided in this section.

(1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an individual, estate or trust, were a resident of this state for the entire taxable year. When determining tentative tax liability under this subdivision, a nonresident shall be allowed the same deductions, exemptions and credits that would be allowable if taxpayer were a resident individual, estate or trust, as the case may be, for the entire taxable year, except that no credit shall be allowed under section twenty of this article §11-21-20 of this code.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer's "federal adjusted gross income" for the taxable year as defined in section nine of this article §11-21-9 of this code: *Provided*, That if this computation produces a result that is out of all appropriate proportion to the amount of taxpayer's West Virginia source income, the Tax Commissioner may provide such equitable relief as the Tax Commissioner, in his or her discretion, considers to be appropriate under the circumstances.

(b) Special rules for estates and trusts. — For purposes of subdivision (1), subsection (a) of this section:

(1) The "federal adjusted gross income" of 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 determined as if such estate or trust were an individual; and

(2) In the case of a 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), "federal adjusted gross income" shall be its "federal adjusted gross income" for the taxable year increased by the amount of any includable gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to Section 644 of the Internal Revenue Code.

(3) When an electing small business trust as defined in Section 1361(e)(1) of the Internal Revenue Code of 1986, as amended, is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641(c) of that code the Internal Revenue Code of 1986 shall be included

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in West Virginia taxable income of the 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).

(c) Special rules for part-year residents. —

(1) For purposes of subdivision (1), subsection (a) of this section, the "federal adjusted gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income for the taxable year, as defined in section nine of this article §11-21-9 of this code, increased or decreased, as the case may be, by the items accrued under subdivision (1), subsection (b), section forty-four of this article §11-21-44(b)(1) of this code, to the extent such items are not otherwise included in federal adjusted gross income for the taxable year, and decreased or increased, as the case may be by the items accrued under subdivision (2) of said subsection §11-21-44(b)(2) of this code, to the extent such items are included in federal adjusted gross income for the taxable year; and

(2) In computing the tax due as if taxpayer were a resident of this state for the entire tax year, West Virginia adjusted gross income shall include the accruals specified in subdivision (1) of this subsection, with the applicable modifications described in section forty-four of this article §11-21-44 of this code.

(d) Definitions. —

(1) "Nonresident estate" means an estate of a decedent who was not a resident of this state at the time of his or her death.

(2) "Nonresident trust" means a trust which is not a resident trust, as defined in section seven of this article §11-21-7 of this code.

(3) "Part-year resident individual" means an individual who is not a resident or nonresident of this state for the entire taxable year.

(e) Effective date. — (1) The provisions of this section shall apply to taxable years beginning after December 31, 1991. As to taxable years beginning prior to that date, the provisions of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

(2) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

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## §11-21-31. Mobile employee exclusion from state source income.

(a) As used in this section:

(1) "Professional athlete" means an athlete who performs services in a professional athletic event for compensation.

(2) "Professional entertainer" means a person who performs services in the professional performing arts for compensation on a per-event basis.

(3) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for compensation on a per-event basis.

(b) Compensation subject to withholding pursuant to §11-21-1 *et seq*. of this code, without regard to any withholding tax exception set forth in §11-21-71a of this code, paid to a nonresident individual is exempt from the tax levied under §11-21-1 *et seq*. of this code if all of the following conditions apply:

(1) The compensation is paid for employment duties performed by the individual in this state on thirty or fewer days in the calendar year;

(2) The individual performed employment duties in more than one state during the calendar year;

(3) The compensation is not paid for employment duties performed by the individual in the individual's capacity as a professional athlete, professional entertainer, or public figure; and

(4) The nonresident individual's state of residence:

(A) Provides a substantially similar exclusion; or

(B) Does not impose an individual income tax; or

(C) The individual's income is exempt from taxation by this state under the United States Constitution or federal statute.

(c) Except as otherwise provided in this article, an employer is not required to withhold taxes under §11-21-1 *et seq*. from compensation that is paid to an employee described in subsection (b) of this section: *Provided,* That if, during the calendar year, the number of days an employee spends performing employment duties in this state exceeds the thirty-day threshold described in subsection (b) of this section, an employer shall withhold and remit tax to this state for every day in that calendar year, including the first thirty days, on which the employee performs employment duties in this state.

(d) *Special rule for determining liability* — For purposes of determining compensation paid

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and subject to withholding under this section:

(1) If an employer maintains a time and attendance system that tracks where employees perform services on a daily basis, then data from the time and attendance system shall be used. For purposes of this section, time and attendance system means a system:

(A) In which the employee is required, on a contemporaneous basis, to record the work location for every day worked outside of the State where the employment duties are primarily performed; and

(B) That is designed to allow the employer to allocate the employee's wages for income tax purposes among all states in which the employee performs services.

(2) In all other cases, the employer shall obtain a written statement from the employee of the number of days reasonably expected to be spent performing services in this State during the taxable year. Absent the employer's actual knowledge of fraud or gross negligence by the employee in making the determination or collusion between the employer and the employee to evade tax, the certification so made by the employee and maintained in the employer's books and records shall be prima facie evidence and constitute a rebuttable presumption of the number of days spent performing services in this State.

(e) For purposes of this section, an employee shall be considered present and performing employment duties within this state for a day if the employee performs more of the employee's employment duties in this state than in any other state during that day. Any portion of the day during which the employee is in transit shall not be considered in determining the location of an employee's performance of employment duties.

(f) The provisions of this section shall be effective on January 1, 2022.

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§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.

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(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.

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**§11-21-33.**

Repealed.

Acts, 1992 Reg. Sess., Ch. 204.

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**§11-21-34.**

Repealed.

Acts, 1992 Reg. Sess., Ch. 204.

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**§11-21-35.**

Repealed.

Acts, 1992 Reg. Sess., Ch. 204.

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**§11-21-36.**

Repealed.

Acts, 1992 Reg. Sess., Ch. 204.

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## §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 commissioner may require.

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

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(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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## §11-21-37a. Allocation and apportionment of income of nonresidents from multistate business activity.

(a) Notwithstanding any provision of §11-21-37 of this code to the contrary, a business doing business in West Virginia and in one or more other states shall allocate its nonbusiness income as provided in §11-21-37a(c) of this code and shall apportion its business income as provided in §11-21-37a(f) of this code to determine the West Virginia source income of its nonresident partners and nonresident S corporation shareholders for purposes of this article. For purposes of this section:

(1) The term "business entity" includes a partnership, limited partnership, joint venture, corporation, S corporation, and any other group or combination acting as a unit, but does not include a sole proprietorship; and

(2) The term "engaging in business" or "doing business" means any activity of a business entity which enjoys the benefits and protection of government and laws in this state.

(b) *Business activities entirely within West Virginia*. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not "taxable in another state". For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.

(c) *Nonbusiness income is allocated*. —

Nonbusiness income. — The term "nonbusiness income" means all income other than business income.

(d) *Business activities partially within and partially without West Virginia; allocation of nonbusiness income*. — If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in §11-21-37a(d)(1) through (4) of this code: *Provided*, That to the extent the items constitute business income of the taxpayer, they may not be so allocated but shall be apportioned to this state according to the provisions of §11-21-37a(e) of this code.

(1) *Net rents and royalties*. —



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(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state; or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) *Capital* gains. —

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale; or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) *Patent and copyright royalties*. —

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication,



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manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(e) *Business income defined*. — The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations and includes all income which is apportionable under the Constitution of the United States.

(f) *Business activities partially within and partially without this state; apportionment of business income*. — All net income, after deducting those items specifically allocated under §11-21-37a(d) of this code, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the denominator of which is four, reduced by the number of factors, if any, having no denominator.

(1) *Property factor*. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1065, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) *Value of property*. — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: *Provided*, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under rules of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise.



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(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) *Movable property*. — The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by other reasonable method acceptable to the Tax Commissioner.

(4) *Leasehold improvements*. — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvement, or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(5) *Average value of property*. — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided*, That the Tax Commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(6) *Payroll factor*. — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation or as shown on a pro forma return.

(7) *Compensation*. — The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

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(8) *Employee*. — The term "employee" means:

(A) Any officer of a business entity; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) *Compensation*. — Compensation is paid or accrued in this state if:

(A) The employee's service is performed entirely within this state; or

(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within this state. The word "incidental" means any service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and:

(i) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of a more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers, or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the employer.

(10) *Sales factor*. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income) and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1065 or 1120, as appropriate, or any successor form, and consisting of those certain pertinent portions of the (gross income) elements set forth: *Provided*, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

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(11) *Allocation of sales of tangible personal property.* —

(A) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the free on board point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which the property is ultimately received after all transportation has been completed is the place at which the property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, is delivery to the purchaser in this state and direct delivery outside this state to a person or firm designated by the purchaser is not delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government.

(B) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed, as defined in subsection (b) of this section, shall be excluded from the denominator of the sales factor.

(12) *Allocation of other sales.* — Sales, other than sales of tangible personal property, are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or

(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in §11-21-7b(b) of this code.

(g) *Income-producing activity.* — The term "income-producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. "Income-producing activity" includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing, or other use of real property;

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(3) The sale, rental, leasing, licensing, or other use of tangible personal property; or

(4) The sale, licensing or other use of intangible personal property. — The mere holding of intangible personal property is not, in itself, an income-producing activity: *Provided*, That the conduct of the business of a financial organization is an income-producing activity.

(h) *Cost of performance*. — The term "cost of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(i) *Other methods of allocation and apportionment*. —

(1) *General*. — If the allocation and apportionment provisions of §11-21-37a(d) and §11-21-37a(f) of this code do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for, or the Tax Commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income. The petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing the return and the petition shall include a statement of the petitioner's objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with detail and proof as the Tax Commissioner requires.

(2) *Burden of proof*. — In any proceeding before the Office of Tax Appeals established in §11-10A-1 *et seq*. of this code, or in any court in which employment of one of the methods of allocation or apportionment provided in subdivision (1) or (2) of this subsection is sought, on the grounds that the allocation and apportionment provisions of §11-21-37a(d) and §11-21-37a(f) of this code do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof is on:

(A) The Tax Commissioner, if the commissioner seeks employment of one of the methods; or

(B) The taxpayer, if the taxpayer seeks employment of one of the other methods.

(j)(A) *Allocation and apportionment on and after January 1, 2022*. — For tax years beginning on and after January 1, 2022, income of flow-through entities allocated and apportioned under this section and §11-21-32 of this code, shall be allocated and apportioned in the same

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manner and to the same extent as the income of corporations and entities taxable under §11-24-1 *et seq*. of this code are allocated and apportioned under §11-24-7 of this code. Apportioned income shall be apportioned pursuant to application of a single sales factor to the same extent as the income of corporations and entities taxable under §11-24-1 *et seq*. of this code are apportioned under §11-24-7 of this code. Allocated income shall be allocated in the same manner and to the same extent as the income of corporations and entities taxable under §11-24-1 *et seq*. of this code are apportioned under §11-24-7 of this code.

(B) For purposes of this article the provisions of §11-21-12K, §11-21-37b and §11-21-37c of this code remain unchanged by this section.

(C) For purposes of this article, "flow-through entity", "conduit entity" or "pass through entity" means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "flow-through entity," "conduit entity" or "pass through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under Section 12 of Title I of the Securities Exchange Act of 1934, 15 USC 78l.

(D) *Allocation of flow-through income to recipients*. — Income of a flow-through entity allocated and apportioned under this section or any other provision of this article is allocated income in the hands of a shareholder, interest owner, partner, member or other recipient of flow-through income, and taxable to such recipient as income allocated to this state under the provisions of this article, or in the case of recipients of such flow through income that are taxable under the provisions of §11-24-1 *et seq*. of this code, such income is taxable to such recipient as income allocated to this state under the provisions of §11-24-1 *et seq*. of this code.

(k) *Effective date*. — (A) The provisions of this section added in 2019 shall apply to taxable years beginning on and after January 1, 2018.

(B) The provisions of this section added in 2022 shall apply to taxable years beginning on and after January 1, 2022.

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## §11-21-37b. Special apportionment rules.

(a) General. — The Legislature hereby finds that the general formula set forth in §11-21-37a of this code for apportioning the business income of individuals, partnerships, other pass-through entities, and small business corporations taxable in this as well as in another state is inappropriate for use by certain businesses due to the particular characteristics of those businesses or the manner in which such businesses are conducted. Accordingly, the general formula set forth in §11-21-37a of this code may not be used to apportion business income when a specific formula established under this section applies to the business of the taxpayer. The Legislature further finds that the Tax Commissioner has the authority under §11-1-1 et seq. of this code to promulgate by legislative rules special formula or formulae by which a specified classification of taxpayers is required to apportion its business income. Accordingly, this section may not be construed as prohibiting the Tax Commissioner from exercising his authority to promulgate legislative rules which set forth such other special formula or formulae and in that regulation requiring a specified classification of taxpayers to apportion their business income as provided in that special formula, instead of apportioning their business income employing the general formula set forth in §11-21-37a of this code, when the commissioner believes that the formula or formulae will more fairly and more reasonably allocate and apportion to this state the adjusted federal taxable income of the taxpayer. Additionally, nothing in this section may prevent the Tax Commissioner from requiring the use, or the taxpayer from petitioning to use, as the case may be, some other method of allocation or apportionment as provided in §11-21-37a(h) of this code. Permission granted to a taxpayer under §11-21-37a(h) of this code to use another method of allocation or apportionment shall be valid for a period of five consecutive taxable years, beginning with the taxable year for which such authorization is granted, provided there is no material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment. Upon expiration of any such authorization the taxpayer may again petition under §11-21-37a of this code to use another method of apportionment. A material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment automatically revokes authorization to use that other method beginning with the taxable year in which the material change of fact occurred or the taxable year for which a material change in law first takes effect, whichever occurs first.

(b) Motor carriers. — Motor carriers of property or passengers shall apportion the business income component of their adjusted federal taxable income to this state by the use of the ratio which their total vehicle miles in this state during the taxable year bears to total vehicle miles of the corporation everywhere during the taxable year, except as otherwise provided in this subsection.

(1) Definitions. — For purposes of this subsection:

(A) "Motor carrier" means any person engaging in the transportation of passengers or property or both, for compensation by motor propelled vehicle over roads in this state, whether traveling on a scheduled route or otherwise.



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(B) "Vehicle mile" means the operation of a motor carrier over a distance of one mile, whether owned or operated by a corporation.

(2) The provisions of this subsection may not apply to a motor carrier:

(A) Which neither owns nor rents real or tangible personal property located in this state, which has made no pick-ups or deliveries within this state, and which has traveled less than 50,000 vehicle miles in this state during the taxable year; or

(B) Which neither owns nor rents any real or tangible personal property located in this state, except vehicles, and which makes no more than 12 trips into or through this state during a taxable year.

(3) The mileage traveled under 50,000 miles or the mileage traveled in this state during the 12 trips into or through this state may not represent more than five percent of the total motor vehicle miles traveled in all states during the taxable year.

(c) Effective date. — The provisions of this section enacted in 2019 shall apply to all taxable years beginning on or after January 1, 2018.

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## §11-21-37c. Special apportionment rules - financial organizations.

(a) *General*. — The Legislature hereby finds that the general formula set forth in §11-21-37a of this code for apportioning the business income of persons taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in §11-21-37a of this code may not be used to apportion the business income of financial organizations, which shall use only the apportionment formula and methods set forth in this section.

(b) *West Virginia financial organizations taxable in another state*. — The West Virginia taxable income of a financial organization that has its commercial domicile in this state and which is taxable in another state shall be the sum of: (1) The nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided §11-21-37a(d) of this code; plus (2) the business income component of its adjusted federal taxable income for the taxable year which is apportioned to this state as provided in this section.

(c) *Out-of-state financial organizations with business activities in this state*. — The West Virginia taxable income of a financial organization that does not have its commercial domicile in this state but which regularly engages in business in this state shall be the sum of: (1) The nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided in §11-21-37a(d) of this code; plus (2) the business income component of its adjusted federal taxable income for the taxable year which is apportioned to this state as provided in this section.

(d) *Engaging in business - nexus presumptions and exclusions*. — A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with 20 or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds $100,000. However, gross receipts from the following types of property, as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property or the acquisition or liquidation of collateral relating to the property shall not be a factor in determining whether the owner is engaging in business in this state:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company;

(2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(3) An interest in a loan or other asset from which the interest is attributed to a consumer

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loan, a commercial loan, or a secured commercial loan and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; or

(5) Any amounts held in an escrow or trust account with respect to property described above.

(e) *Definitions*. — For purposes of this section:

(1) "Commercial domicile" has same meaning as that term is defined in §11-24-3a of this code.

(2) "Deposit" means:

(A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate, or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable: *Provided*, That without limiting the generality of the term "money or its equivalent", any account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any credit or instrument is primarily or secondarily liable or for a charge against a deposit account or in settlement of checks, drafts or other instruments forwarded to the bank for collection;

(B) Trust funds received or held by the financial organization, whether held in the trust department or held or deposited in any other department of the financial organization;

(C) Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other, including funds held as dealers' reserves or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to

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meet its acceptances or letters of credit, and withheld taxes: *Provided*, That there may not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization, or under condition that the receipt thereof immediately reduces or extinguishes an indebtedness;

(D) Outstanding drafts, including advice or authorization to charge a financial organization's balance in another organization, cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends, or purchases or other costs or expenses of the financial organization itself; and

(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if the entity is engaged in soliciting and holding balances in the regular course of its business.

(3) "Financial organization" has the same meaning as that term is defined in §11-21-3a of this code.

(4) "Sales" means, for purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (g) of this section, regardless of their source.

(f) *Apportionment rules*. — A financial organization which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in §11-21-12j of this code, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (g) of this section.

(g) *Special gross receipts factor*. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: *Provided*, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in §11-21-12j(a)(1)(A), (B), (C), and (D) of this code.

(1) *Numerator*. — The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under §11-21-37a of this code, the following:

(A) Receipts from the lease or rental of real or tangible personal property whether as the economic equivalent of an extension of credit or otherwise if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if the security property is located in the state. If the security property is also located in one or more other states, receipts are

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presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be proposed by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: *Provided*, That receipts are presumed to be from sources in this state and the presumption may be overcome by reference to factors described in rules to be proposed by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(E) Interest income and other receipts from a financial organization's syndication and participation in loans, under the rules set forth in paragraphs (A) through (D), inclusive, of this subdivision;

(F) Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this state or if the billings for any receipts are regularly sent to an address in this state;

(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. When merchants are located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer's election, receipts from loan-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually

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written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death or the grantor who either funded or established the trust is a resident of this state; or

(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of service is received in this state;

(I) Gross receipts from the issuance of travelers' checks and money orders if the checks and money orders are purchased in this state; and

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

(2) *Denominator*. — The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(h) *Effective date*. — The provisions of this section enacted in 2019 shall apply to all taxable years beginning on or after January 1, 2018.

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## §11-21-38. West Virginia source income of nonresident estate or trust.

(a) General. -- The West Virginia source income of a nonresident estate or trust shall be determined as follows:

(1) Items in distributable net income. -- There shall be determined its share of income, gain, loss and deduction from West Virginia sources under section thirty-nine of this article (relating to items entering into the definition of distributable net income).

(2) Items not in distributable net income. -- There shall be added to or subtracted (as the case may be) the amount derived from or connected with West Virginia sources of any income, gain, loss and deduction which would be included in the determination of federal adjusted gross income if the estate or trust were an individual and which is recognized for federal income tax purposes, but excluded from the definition of federal distributable net income of the estate or trust. The source of such income, gain, loss and deduction shall be determined in accordance with the applicable rules of section thirty-two of this article as in the case of a nonresident individual.

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

(c) Effective date. -- The provisions of 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 this section, as then in effect, is fully and completely preserved.

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## §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 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

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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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## §11-21-40. Credit for income tax of state of residence.

(a) General. — A nonresident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, of which the taxpayer is a resident.

(b) Limitation. — The credit under this section shall not exceed either:

(1) The percentage of the other tax determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of his or her income subject to such other tax, or

(2) The percentage of the tax otherwise due under this article, determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of the taxpayer's West Virginia income.

(c) Exceptions. — No credit may be allowed under this section for a taxable year beginning after December 31, 1987, except pursuant to a written agreement between this state and the nonresident individual's state of residence. The State Tax Commissioner is hereby authorized to enter into such agreements necessary to effectuate the purpose of this section when he or she determines that such agreements are in the best interest of this state and its residents.

(d) Definition. — For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The income derived from West Virginia sources by 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), determined in accordance with the applicable rules of section thirty-two §11-21-32 of this code as in the case of a nonresident individual.

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## §11-21-41. Special case in which a nonresident need not file West Virginia income tax return.

A nonresident individual, who at no time during the taxable year was a resident of this state, is hereby relieved of filing an income tax return to this state for that taxable year provided:

(1) His only income from sources within this state was from salaries, wages, or compensation for personal services performed within this state, and

(2) Such salaries, wages or compensation for personal services were subject to income taxation by the state of his residence under a net income tax law substantially similar in principle to this article, and

(3) The laws of such other state contain a provision substantially similar in effect to that contained in section forty of this article and applicable to residents of this state, and

(4) The laws of such other state afford like treatment to a resident of this state who earned salaries, wages or compensation for personal services in such other state.

This section shall apply with respect to taxable years beginning after December 31, 1963.

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## §11-21-42. Military incentive tax credit.

Every employer entitled to receive a tax credit against his West Virginia personal income tax liability as provided in article two-c, chapter twenty-one-a of this code shall receive the credit for the period and in the amount specified in said article two-c. The State Tax Commissioner shall provide by appropriate rule or regulation for the reporting, filing and application of claims of the tax credit provided for in a manner in conformity with the legislative purpose as declared in section two, article two-c, chapter twenty-one-a of this code.

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## §11-21-43. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

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## §11-21-44. West Virginia source income of part-year resident individuals.

(a) Individuals. -- The West Virginia source income of a part-year resident individual shall be the sum of the following:

(1) Federal adjusted gross income for the period of residence, computed as if his or her taxable year for federal income tax purposes were limited to the period of residence.

(2) West Virginia source income for the period of nonresidence determined in accordance with section thirty-two of this article as if his or her taxable year for federal income tax purposes were limited to the period of nonresidence.

(3) The special accruals required by subsection (b) of this section.

(b) Special accruals.

(1) If an individual changes his or her status from resident to nonresident he or she shall, regardless of his or her method of accounting, accrue to the portion of the taxable year prior to such change in status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly entering into his or her federal adjusted gross income for such portion of the taxable year or a prior taxable year under his or her method of accounting.

(2) If an individual changes his or her status from nonresident to resident, he or she shall, regardless of his or her method of accounting, accrue to the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, other than items derived from or connected with West Virginia sources, if not otherwise properly entering into his or her federal adjusted gross income for such portion of the taxable year or for a prior taxable year under his or her method of accounting.

(3) No item of income, gain, loss or deduction which is accrued under this subsection shall be taken into account in determining West Virginia adjusted gross income or West Virginia source income for any subsequent period.

(4) The accruals under this subsection shall not be required if the individual files with the Tax Commissioner a bond or other security acceptable to the Tax Commissioner, conditioned upon the inclusion of amounts accruable under this subsection in West Virginia adjusted gross income or West Virginia source income for one or more subsequent taxable years as if the individual had not changed his or her resident status.

(c) Effective date. -- The provisions of this section shall apply to taxable years beginning after December 31, 1991, as amended. For taxable years that began prior to January 1, 1992, the provisions of section fifty-four, which is repealed by this bill, apply and for that purpose, the provisions of section fifty-four are fully and completely preserved.

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**§11-21-45.**

Reserved for future use.

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## §11-21-46.

Reserved for future use.

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**§11-21-47.**

Reserved for future use.

WV Legislature

## §11-21-48.

Reserved for future use.

WV Legislature

**§11-21-49.**

Reserved for future use.

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**§11-21-50.**

Reserved for future use.

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

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(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.

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**§11-21-51a. Composite returns.**

(a) Nonresident individuals who are required by this article to file a return and who are:

(1) Partners in a partnership deriving income from a West Virginia source or sources; or

(2) Shareholders of a corporation having income from a West Virginia source or sources and which made an election under Section 1362(a) of the Internal Revenue Code (S corporations) for the taxable year; or

(3) Beneficiaries who received a distribution (actual or deemed) from an estate or trust having income from a West Virginia source or sources may, upon payment of a composite return processing fee of $50, file a composite return in accordance with the provisions of this section.

(b) In filing a composite return and determining the tax due thereon, no personal exemptions may be utilized, and the rate of tax shall be six and one-half percent. The entity or entities, to which the composite return relates are responsible for collection and remittance of all income tax due at the time the return is filed.

(c) The composite return shall be filed in a manner and form acceptable to and in accordance with instructions from the commissioner, and need not be signed by all nonresident individuals on whose behalf the return is filed: Provided, That the return is signed by a partner, in the case of a partnership, an equity owner of any other pass-through entity a corporate officer, in the case of a corporation, by a trustee, in the case of a trust or by an executor or administrator in the case of an estate.

(d) For the purposes of this section, a composite return means a return filed on a group basis as though there was one taxpayer, and sets forth the name, address, taxpayer identification number and percent ownership or interest of each nonresident individual who consents to be included in the composite return in addition to return information as that term is defined in §11-10-5d of this code; the term includes block filing: Provided, That nothing in this section may prohibit a nonresident from also filing a separate nonresident personal income tax return for the taxable year and a separate return shall be filed if the nonresident has income from any other West Virginia source. If a separate return is also filed for the taxable year, the nonresident shall be allowed credit for his or her share of the tax remitted with the composite return for that taxable year.

(e) This section, as amended in the year 2019, shall apply to composite returns filed after December 31, 2018.

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## §11-21-52. Time and place for filing returns and paying tax.

A person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon to the Tax Commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The Tax Commissioner shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this article and for payment of any tax.

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## §11-21-53. Signing of returns and other documents.

(a) General. -- Any return, declaration, statement or other document required to be made pursuant to this article shall be signed in accordance with regulations or instructions prescribed by the Tax Commissioner. The fact that an individual's name is signed to a return, declaration, statement, or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him

(b) Partnerships. -- Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. -- The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this article, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

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## §11-21-54. Electronic filing for certain tax preparers.

(a) If an income tax return preparer filed more than one hundred personal income tax returns for any taxable year that began after January 1, 2005, and if during calendar year 2006 or any calendar year thereafter that income tax preparer prepares one or more personal income tax returns using tax preparation software for a previous taxable year, then for each current taxable year all unamended personal income tax returns prepared by that preparer shall be filed electronically, except as provided in subsections (c) and (d) of this section: Provided, That if an income tax return preparer filed more than twenty-five personal income tax returns for any tax year that began on or after January 1, 2010, and if that income tax preparer prepares one or more personal income tax returns using tax preparation software, then for each tax year beginning on or after January 1, 2011, all unamended personal income tax returns prepared by that preparer shall be filed electronically, except as provided in subsections (c) and (d) of this section.

(b) For purposes of this section:

(1) "Income tax preparer" means any person who prepares, in exchange for compensation, or who employs another person to prepare, in exchange for compensation, all or a substantial portion of any return for a taxpayer for the tax imposed by this article and who is identified as the preparer for the taxpayer on the return. A person who only performs those acts described in clauses (i) through (iv) of Section 7701(a)(36)(B) of the Internal Revenue Code with respect to the preparation of a return for a trust or estate for which he or she is a fiduciary or a return for a partnership of which he or she is a partner is not an income tax preparer for purposes of this section.

(2) "Electronic filing" or "e-filing" means filing using electronic technology such as computer modem, magnetic media, optical disk, facsimile machine, telephone or other technology approved by the Tax Commissioner, in such manner as he or she deems acceptable.

(3) "Tax preparation software" means any computer software program intended for accounting or tax return preparation.

(c) Subsection (a) of this section shall cease to apply to an income tax preparer if, for the previous taxable year, that income tax preparer prepared no more than twenty-five personal income tax returns.

(d) This section first applies to personal income tax returns required to be filed for taxable years beginning January 1, 2006. This section does not require electronic filing of: (1) Returns that were not required to be filed for taxable years beginning prior to that date; (2) returns for prior taxable years beginning prior to that date; or (3) amended returns for any taxable year.

(e) An income tax preparer who is required to e-file under this section but does not do so is liable for a penalty in the amount of $25 for each return prepared that is not e-filed, unless

the preparer shows that the failure to do so is due to technical inability to comply on the part of a tax preparer or a documented election by a client not to file electronically.

(f) The commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she deems necessary.

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## §11-21-55. Declaration of estimated tax.

(a) Requirement of declaration. -- Every resident and nonresident individual shall make a declaration of his estimated tax for the taxable year, containing such information as the Tax Commissioner may prescribe by regulations or instructions, if his West Virginia adjusted gross income, other than from wages on which tax is withheld under this article, can reasonably be expected to exceed $400 plus the sum of the West Virginia personal exemptions to which he is entitled.

(b) Definition of estimated tax. -- The term "estimated tax" means the amount which an individual estimates to be his income tax under this article for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

(c) Joint declaration of husband and wife. -- A husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but husband and wife elect to determine their taxes under this article separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Time for filing declaration. -- A declaration of estimated tax of an individual other than a farmer shall be filed on or before April 15 of the taxable year, except that if the requirements of subsection (a) are first met:

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15, or

(2) After June 1 and before September 2, of the taxable year, the declaration shall be filed on or before September 15, or

(3) After September 1, of the taxable year, the declaration shall be filed on or before January 15, of the succeeding year.

(e) Declaration of estimated tax by a farmer. -- A declaration of estimated tax of an individual having an estimated West Virginia adjusted gross income from farming for the taxable year which is at least two thirds of his total estimated West Virginia adjusted gross income for the taxable year may be filed at any time on or before January 15, of the succeeding year, in lieu of the time otherwise prescribed.

(f) Declaration of estimated tax of $40 or less. -- A declaration of estimated tax of an individual having a total estimated tax for the taxable year of $40 or less may be filed at any time on or before January 15, of the succeeding year under regulations of the Tax Commissioner.

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(g) Amendments of declaration. -- An individual may amend a declaration under regulations of the Tax Commissioner.

(h) Return as declaration or amendment. -- If on or before February 15 of the succeeding taxable year an individual other than a farmer files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as his declaration, if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January 15, .

(2) Such return, if filed on or before January 15, shall be considered an amendment permitted by subsection (g) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(i) Fiscal year. -- This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(j) Short taxable year. -- An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the Tax Commissioner.

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

(1) Return of farmer as declaration of estimated tax. -- If on or before March 1 of the succeeding taxable year an individual who is a farmer files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return, such return shall be considered as his declaration, if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January 15, for a taxable year ending after December 31, 1989.

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## §11-21-56. Payments of estimated tax.

(a) General. -- The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following fifteenth day of June, fifteenth day of September, and fifteenth day of January, respectively.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following fifteenth day of September and fifteenth day of January, respectively.

(3) If the declaration is filed after June 15 and not after September 15, of the taxable year, and is not required to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following fifteenth day of January.

(4) If the declaration is filed after September 15, of the taxable year, and is not required to be filed on or before September 15, of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2), (3) and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Farmers. -- If an individual referred to in section fifty-five (e) (relating to income from farming) makes a declaration of estimated tax after September 15, of the taxable year and on or before the following fifteenth day of January, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) Amendments of declaration. -- If any amendment of a declaration is filed, the remaining installments, if any, shall be rateably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15, of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

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(d) Application to short taxable year. -- This section shall apply to a taxable year of less than twelve months in accordance with regulations of the Tax Commissioner.

(e) Fiscal year. -- This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(f) Installments paid in advance. -- An individual may elect to pay any installment of his estimated tax prior to the date prescribed for its payment.

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## §11-21-57. Extensions of time.

(a) General. -- The Tax Commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as he may require. Except for a taxpayer who is outside the United States, no such extension shall exceed six months.

(b) Amount determined as deficiency. -- The Tax Commissioner may, under regulations, extend the time for payment of an amount determined as a deficiency for a period not to exceed eighteen months from the date designated for payment of the deficiency, and under exceptional circumstances, for a further period not to exceed twelve months. An extension under this subsection may be granted only where it is established to the satisfaction of the Tax Commissioner that the payment of a deficiency upon the date designated for payment would result in undue hardship. No extension shall be granted if any part of the deficiency is due to intentional disregard of rules and regulations or to fraud.

(c) Claims in bankruptcy or receivership proceedings. -- Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax.

(d) Furnishing of security. -- If any extension of time is granted for payment of any tax or deficiency, the Tax Commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the Tax Commissioner may require.

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## §11-21-58. Requirements concerning returns, notices, records and statements.

(a) General. -- The Tax Commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The Tax Commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the Tax Commissioner may deem sufficient to show whether or not such person is liable under this article for tax or for collection of tax.

(b) Partnerships. -- Every partnership having a resident partner or having any income derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the Tax Commissioner may by regulations and instructions prescribe.

(c) Information at source. -- The Tax Commissioner may prescribe regulations and instructions requiring returns of information to be made and filed on or before the twenty-eighth day of February of each year as to the payment or crediting in any calendar year of amounts of $600 or more to any taxpayer under this article. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, etc. -- Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the Tax Commissioner, as may be required by regulation.

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**§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.

(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

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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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## §11-21-59a. Report of change in taxes paid to other states.

(a) If the amount of any individual taxpayer's income tax reported on a return filed with any other state for any taxable year is changed or corrected by such state as a result of an examination conducted by a competent authority of the state, and the taxpayer previously claimed a credit for such tax pursuant to §11-21-20 of this code, the taxpayer shall file an amended return, or such other form as the Tax Commissioner may prescribe, reporting the effects of the change or correction on the taxpayer's West Virginia personal income tax within one year after the final determination of the change or correction, or as otherwise required by the Tax Commissioner, and shall concede the accuracy of such determination, or declare wherein it is erroneous. However, if the Tax Commissioner has sufficient information from which to compute the proper additional tax and the taxpayer has paid the tax, then the taxpayer is not required to file an amended West Virginia personal income tax return. Any taxpayer filing an amended income tax return with any other state that results in a change to the taxpayer's West Virginia personal income tax shall also file an amended return within one year thereafter under this article and shall provide such information as the Tax Commissioner may require. The Tax Commissioner may by rule prescribe such exceptions to the requirements of this section as the commissioner considers appropriate.

(b) 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.

(c) This section amended in the year 2019 shall apply, without regard to the taxable year, to federal determinations that become final on or after the effective date of this section enacted in the year 2019.

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## §11-21-60. Change of election.

Any election expressly authorized by this article may be changed on such terms and conditions as the Tax Commissioner may prescribe by regulation.

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## §11-21-61. Extension of time for performing certain acts due to Desert Shield service.

(a) General rule. -- For purposes of applying this article and article ten of this chapter with respect to the tax liability (including any interest, penalty, additional amount, or addition to tax) of any individual who performed Desert Shield services, the period during which such individual performed such services, and the next one hundred eighty days thereafter, shall be disregarded in determining whether any of the acts referred to in subsection (b) were performed within the time prescribed therefor.

(b) Time for performing certain acts postponed by reason of Desert Shield service. -- Whenever the general rule specified in subsection (a) applies, it shall apply to determine:

Whether any of the following acts was performed within the time prescribed therefor;

(A) Filing any return of income under this article (except income tax withheld at source);

(B) Payment of any income tax due under this article (except income tax withheld at source), or any installment thereof or of any other liability to this state in respect thereof;

(C) Filing a petition for reassessment or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(D) Allowance of a credit or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(E) Filing a claim for credit or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(F) Appealing any appealable decision of the Tax Commissioner to the courts of this state, or for appealing to the Supreme Court of Appeals a circuit court decision affirming, in whole or in part, the decision of the Tax Commissioner;

(G) Assessment of any tax (including any penalty, additional amount or addition to tax);

(H) Giving or making any notice or demand for the payment of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax), or with respect to any liability to this state in respect of any such tax;

(I) Collection by the Tax Commissioner, by levy or otherwise, of any liability in respect of any tax administered under article ten of this chapter;

(J) Bringing suit by any officer on behalf of this state, in respect of any liability in respect of any tax administered under article ten of this chapter;

(K) Any other act required or permitted under article nine or ten of this chapter or under any

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article of this chapter administered under said article ten, or specified in regulations promulgated under this section by the Tax Commissioner, in conformity with the provisions of article three, chapter twenty-nine-a of this code.

(c) Treatment of individuals performing Desert Shield services.

(1) In general. -- Any individual who performed Desert Shield service shall be entitled to the benefits of this section.

(2) Desert Shield service. -- For purposes of this section, the term "Desert Shield service" means any service in a unit of the Armed Forces of the United States (as defined in Section 7701(a)(15) of the Internal Revenue Code of 1986) or in support of any such unit if:

(A) Such service is performed in the area designated by the President of the United States as the "Persian Gulf Desert Shield Area";

(B) Such service is performed during any portion of the period beginning August 2, 1990, and ending on the date on which any portion of the area referred to in subparagraph (A) is designated a combat zone pursuant to Section 112 of the Internal Revenue Code of 1986; or

(C) Such service is performed during any portion of the period that there is in effect a designation by the President of the United States that the "Persian Gulf Desert Shield Area" is a combat zone, pursuant to Section 112 of the Internal Revenue code.

(3) Hospitalization. -- An individual shall be treated as performing Desert Shield services during any period of continuous qualified hospitalization attributable to an injury received while performing Desert Shield service. The term "qualified hospitalization" means:

(A) Any hospitalization outside the United States; and

(B) Any hospitalization inside the United States, except that not more than five years of hospitalization may be taken into account under this subparagraph (B); and this subparagraph shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (a) of this section.

(d) Special rules.

(1) Application to spouse. -- The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than two years after the date designated by the President of the United States, under Section 112 of the Internal Revenue Code, as the date of termination of combatant activities in the Persian Gulf Desert Shield area.

(2) Missing status. -- The period of service referred to in subsection (c) shall include the period during which an individual entitled to benefits under subsection (a) is in missing

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status, within the meaning of Section 6013(f)(3) of the Internal Revenue Code of 1986.

(e) Exceptions.

(1) Jeopardy assessments or collection. -- Notwithstanding the provisions of subsection (a), if the Tax Commissioner determines that collection of the amount of any tax would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay the assessment of such amount, or the collection of such amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this subsection the amount of interest, penalty, additional amount and addition to the tax, if any, in respect of the period disregarded under subsection (a).

(2) Action taken before ascertainment of rights to benefits. -- The assessment or collection of any tax administered under article ten of this chapter may be made, begun or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

(3) Notwithstanding the provisions of paragraphs (1) and (2), the provision of this subsection shall be applied in conformity with the Soldiers' and Sailors' Civil Relief Act.

(f) Effective Date. -- The provisions of this section shall be retroactive to August 2, 1990.

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## §11-21-62. Income taxes of members of Armed Forces on death.

(a) General rule. -- In the case of any individual who dies while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under Section 112 of the Internal Revenue Code of 1986) or as a result of wounds, disease or injury incurred while so serving:

(1) Any tax imposed by this article shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day he or she served in a combat zone after August 1, 1990; and

(2) Any tax under this article for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his or her death (including interest, additions to tax and additional amounts) shall not be assessed and if assessed the assessment shall be abated and if the assessment has been collected, the amount collected shall be credited or refunded as an overpayment.

(b) Individuals in missing status. -- For purposes of this section, in the case of an individual who was in a missing status within the meaning of Section 6013(f)(3)(A) of the Internal Revenue Code of 1986, the date of such individual's death shall be treated as being not earlier than the date on which a determination of such individual's death is made under section 556, Title 37 of the United States Code. Subsection (a)(1) shall not apply for any taxable year beginning more than two years after the date designated under Section 112 of the Internal Revenue code as the date of termination of combatant activities in a combat zone.

(c) Certain military or civilian employees of the United States dying as a result of injuries sustained overseas.

(1) In general. -- In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury which were incurred while the individual was a military or civilian employee of the United States and which were incurred outside the United States in a terroristic or military action, any tax imposed by this article shall not apply:

(A) With respect to the taxable year in which falls the date of such individual's death; and

(B) With respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(2) Terroristic or military action. -- For purposes of paragraph (1), the term "terroristic or military action" means any action which is terroristic or military action for purposes of Section 692 of the Internal Revenue Code of 1986.

(d) Effective date. -- The provisions of this section shall apply to taxable years beginning after December 31, 1990.

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**§11-21-63.**

Reserved for future use.

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**§11-21-64.**

Reserved for future use.

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**§11-21-65.**

Reserved for future use.

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**§11-21-66.**

Reserved for future use.

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**§11-21-67.**

Reserved for future use.

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**§11-21-68.**

Reserved for future use.

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**§11-21-69.**

Reserved for future use.

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**§11-21-70.**

Reserved for future use.

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## §11-21-71. Requirement of withholding tax from wages.

(a) General. -- Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the Tax Commissioner, with due regard to the West Virginia withholding exemption of the employee and any low income exclusion allowed to such employee under section ten of this article and asserted in good faith by the employee. This section shall not apply to payments by the United States for service in the Armed Forces of the United States: Provided, That the Tax Commissioner may execute an agreement with the secretary of the treasury, as provided in 5 U.S.C. §5517, for the mandatory withholding of tax under this section on pay to members of the National Guard while participating in exercises or performing duty under 32 U.S.C. §502, and on pay to members of the ready reserve while participating in scheduled drills or training periods or serving on active duty for training under 10 U.S.C. §270(a).

(b) Withholding exemptions. -- For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he or she is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) With respect to any taxable year beginning after December 31, 1986, the amount of each West Virginia exemption shall be $2,000 whether the individual is a resident or nonresident.

(c) Exception for certain nonresidents. -- If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from wages of an employee, the Tax Commissioner may by regulation relieve the employers of such employees from withholding requirements of this article with respect to such employees.

(d) Effective date. -- The provisions of this section, as amended in the year 1996, shall apply to all taxable years or portions thereof beginning after June 30, 1996.

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**§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.**

(a) General rule. — For the privilege of doing business in this state or deriving rents or royalties from real or tangible personal property located in this state, including, but not limited to, natural resources in place and standing timber, a partnership, S corporation, estate or trust, which is treated as a pass-through entity for federal income tax purposes and which has taxable income for the taxable year derived from or connected with West Virginia sources any portion of which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary, as the case may be, shall pay a withholding tax under this section, except as provided in subsections (c) and (k) of this section.

(b) Amount of withholding tax. —

(1) In general. — The amount of withholding tax payable by any partnership, S corporation, 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), under subsection (a) of this section, shall be equal to four percent of the effectively connected taxable income of the partnership, S corporation, 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), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a 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) or estate: *Provided*, That for taxable years commencing on or after January 1, 2008, the amount of withholding tax payable by any partnership, S corporation, 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), under subsection (a) of this section, shall be equal to six and one-half percent of the effectively connected taxable income of the partnership, S corporation, 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), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate.

(2) Credits against tax. — When determining the amount of withholding tax due under this section, the pass-through entity may apply any tax credits allowable under this chapter to the pass-through entity which pass through to the nonresident distributees: *Provided*, That in no event may the application of any credit or credits reduce the tax liability of the distributee under this article to less than zero.

(c) When withholding is not required. — Withholding may not be required:

(1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision, a person is exempt from the tax



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imposed by this article only if such person is, by reason of that person's purpose or activities, exempt from paying federal income taxes on such person's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or §11-24-1 *et seq*. of this code; or

(2) On distributions to a corporation which is exempt from the tax imposed by §11-24-1 *et seq*. of this code. For purposes of this subdivision, a corporation is exempt from the tax imposed by §11-24-1 *et seq*. of this code only if the corporation, by reason of its purpose or activities is exempt from paying federal income taxes on the corporation's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by §11-24-1 *et seq*. of this code provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable year filed under this article or §11-24-1 *et seq*. of this code; or

(3) On distributions when compliance will cause undue hardship on the pass-through entity: *Provided*, That no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his or her discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or

(4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for federal income tax is not treated as a partnership under this article and is not required to withhold under this section. However, such unincorporated organizations shall make and file with the Tax Commissioner a true and accurate return of information under §11-21-58(c) of this code, under such rules and in such form and manner as the Tax Commissioner may prescribe, setting forth: (A) The amount of fixed or determinable gains, profits, and income; and (B) the name, address and taxpayer identification number of persons receiving fixed or determinable gains, profits or income from the nonpartnership venture.

(5) Publicly traded partnerships. — A publicly traded partnership, as defined in §11-21A-1 of this code, that is treated as a partnership for federal income tax purposes for the taxable year, is exempt from the withholding requirements of §11-21-71a of this code of this section, if the following information is provided to the Tax Commissioner: The name, address, taxpayer identification number, and West Virginia source income of each partner that had an

interest in the publicly traded partnership during the taxable year. This information shall be provided in an electronic format approved by the Tax Commissioner.

(d) Payment of withheld tax. —

(1) General rule. — Each partnership, S corporation, estate or trust, required to withhold tax under this section, shall pay the amount required to be withheld to the Tax Commissioner no later than:

(A) S corporations. — The 15th day of the third month following the close of the taxable year of the S corporation along with the annual information return due under §11-24-1 *et seq*. of this code, unless paragraph (C) of this subdivision applies.

(B) Partnerships, estates, and trusts. — The 15th day of the fourth month following the close of the taxable year of the partnership, estate or trust, with the annual return of the partnership, estate or trust due under this article, unless paragraph (C) of this subdivision applies: *Provided*, That for tax years beginning after December 31, 2015, partnerships shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return of the partnership due under this article, on the 15th day of the third month following the close of the taxable year of the partnership, unless paragraph (C) of this subdivision applies.

(C) Composite returns. — The 15th day of the fourth month of the taxable year with the composite return filed under §11-21-51a of this code: *Provided*, That for tax years beginning after December 31, 2015, partnerships or partners in a partnership filing composite returns under §11-21-51a of this code shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return due under this article, on the 15th day of the third month following the close of the taxable year.

(2) Special rules. —

(A) Where there is extension of time to file return. — An extension of time for filing the returns referenced in subdivision (1) of this subsection does not extend the time for paying the amount of withholding tax due under this section. In this situation, the pass-through entity shall pay, by the date specified in subdivision (1) of this subsection, at least 90 percent of the withholding tax due for the taxable year, or 100 percent of the tax paid under this section for the prior taxable year, if such taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing the return and the amount of tax due with such return is 10 percent or less of the tax due under this section for the taxable year, no additions to tax may be imposed under §11-10-1 *et seq*. of this code with respect to balance so remitted. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess

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shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

(B) Deposit in trust for Tax Commissioner. — The Tax Commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section, at any earlier time or times.

(e) Effectively connected taxable income. — For purposes of this section, the term "effectively connected taxable income" means the taxable income or portion thereof of a partnership, S corporation, estate or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under §11-21-32 of this code and such rules as the Tax Commissioner may prescribe, whether the amount is actually distributed or is determined to have been distributed for federal income tax purposes.

(f) Treatment of nonresident partners, S corporation shareholders, or beneficiaries of a trust or estate. —

(1) Allowance of credit. — Each nonresident partner, nonresident shareholder, or nonresident beneficiary shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, S corporation, estate or trust under this section: *Provided*, That when the distribution is to a corporation taxable under §11-24-1 *et seq*. of this code, the credit allowed by this section shall be applied against the distributee corporation's liability for tax under §11-24-1 *et seq*. of this code.

(2) Credit treated as distributed to partner, shareholder, or beneficiary. — Except as provided in rules, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share of any withholding tax paid by the partnership, S corporation, estate or trust under this section shall be treated as distributed to the partner by the partnership, or to the shareholder by the S corporation, or to the beneficiary by the estate or trust on the earlier of:

(A) The day on which the tax was paid to the Tax Commissioner by the partnership, S corporation, estate, or trust; or

(B) The last day of the taxable year for which the tax was paid by the partnership, S corporation, estate, or trust.

(g) Regulations. — The Tax Commissioner shall prescribe such rules as may be necessary to carry out the purposes of this section.

(h) Information statement. —

(1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the Tax Commissioner, showing the amount of



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West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate or trust, to the nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the Tax Commissioner may require.

(2) A copy of the information statements required by this subsection shall be filed with the West Virginia return filed under this article (or §11-24-1 *et seq*. of this code for S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement shall be furnished to each nonresident distributee on or before the due date of the pass-through entity's return under this article or §11-24-1 *et seq*. of this code for the taxable year, including extensions of time for filing such return, or such later date as may be allowed by the Tax Commissioner.

(i) Liability for withheld tax. — Every person required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years (of such persons) beginning after December 31, 1991, except as otherwise provided in this section. The amount of tax required to be withheld and paid over to the Tax Commissioner shall be considered the tax of the partnership, estate, or trust, as the case may be, for purposes of §11-9-1 *et seq*. and §11-10-1 *et seq*. of this code. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No partner, S corporation shareholder, or beneficiary of a trust or estate, may have a right of action against the partnership, S corporation, estate, or trust, in respect to any moneys withheld from the person's distributive share and paid over to the Tax Commissioner in compliance with or in intended compliance with this section.

(j) Failure to withhold. — If any partnership, S corporation, estate or trust fails to deduct and withhold tax as required by this section and thereafter the tax against which the tax may be credited is paid, the tax so required to be deducted and withheld under this section may not be collected from the partnership, S corporation, estate, or trust, as the case may be, but the partnership, S corporation, estate, or trust may not be relieved from liability for any penalties or interest on additions to tax otherwise applicable in respect of the failure to withhold.

(k) Distributee agreements. —

(1) The Tax Commissioner shall permit a nonresident distributee to file with a pass-through entity, on a form prescribed by the Tax Commissioner, the agreement of the nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or §11-24-1 *et seq*. of this code in the case of a C corporation, on the distributee with respect to the effectively connected taxable income of the pass-through entity; and (B) to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or §11-24-1 *et seq*. of this code in the case of a C corporation), together with related interest, penalties, additional amounts and additions to tax, owed by the nonresident distributee.

(2) A nonresident distributee electing to execute an agreement under this subsection shall file a complete and properly executed agreement with each pass-through entity for which this election is made, on or before the last day of the first taxable year of the pass-through entity in respect of which the agreement applies. The pass-through entity shall file a copy of that agreement with the Tax Commissioner as provided in subdivision (5) of this subsection.

(3) After an agreement is filed with the pass-through entity, that agreement may be revoked by a distributee only in accordance with rules promulgated by the Tax Commissioner.

(4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity may not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee' s continuing failure to comply with the terms of the agreement.

(5) The pass-through entity shall file with the Tax Commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or §11-24-1 *et seq*. of this code if S corporations. If the pass-through entity fails to timely file with the Tax Commissioner a copy of an agreement executed by a distributee and furnished to the pass-through entity in accordance with this section, then the pass-through entity shall remit to the Tax Commissioner an amount equal to the amount that should have been withheld under this section from the nonresident distributee. The pass-through entity may recover payment made pursuant to the preceding sentence from the distributee on whose behalf the payment was made.

(l) Definitions. — For purposes of this section, the following terms mean:

(1) Corporation. — The term "corporation" includes associations, joint stock companies, and other entities which are taxed as corporations for federal income tax purposes.

(A) C corporation. — The term "C corporation" means a corporation which is not an S corporation for federal income tax purposes.

(B) S corporation. — The term "S corporation" means a corporation for which a valid election under Section 1362(a) of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

(2) Distributee. — The term "distributee" includes any partner of a partnership, any shareholder of an S corporation and any beneficiary of an estate or trust that is treated as a pass-through entity for federal income tax purposes for the taxable year of the entity, with respect to all or a portion of its income.

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(3) Internal Revenue Code. — The term "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, through the date specified in §11-21-9 of this code.

(4) Nonresident distributee. — The term "nonresident distributee" includes any individual who is treated as a nonresident of this state under this article; and any partnership, estate, trust, or corporation whose commercial domicile is located outside this state.

(5) Partner. — The term "partner" includes a member of a partnership as that term is defined in this section, and an equity owner of any other pass-through entity.

(6) Partnership. — The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. "Partnership" does not include an unincorporated organization which, under Section 761 of the Internal Revenue Code, is not treated as a partnership for the taxable year for federal income tax purposes.

(7) "Pass-through entity" means any partnership or other business entity, that is not subject to tax under §11-24-1 *et seq*. of this code, imposing tax on C corporations or other entities taxable as a C corporation for federal income tax purposes.

(8) Taxable period. — The term "taxable period" means, if an S corporation, any taxable year or portion of a taxable year during which a corporation is an S corporation.

(9) Taxable year of the pass-through entity. — The term "taxable year of the pass-through entity" means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

(m) Effective date. — The provisions of this section shall first apply to taxable years of pass-through entities beginning after December 31, 1991.

(n) This section as amended in the year 2019 shall apply, without regard to the taxable year, to taxes owed attributable to federal determinations that become final on or after the effective date of this section enacted in the year 2019.

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**§11-21-71b. Withholding tax on West Virginia source income of nonresidents.**

(a) (1) In this section the following words have the meanings indicated.

(2) (A) Except as provided in paragraph (B) of this subdivision, "net proceeds" means the total sales price paid to the transferor less:

(i) Debts of the transferor secured by a mortgage or other lien on the property being transferred that are being paid upon the sale or exchange of the property; and

(ii) Other expenses of the transferor arising out of the sale or exchange of the property and disclosed on a settlement statement prepared in connection with the sale or exchange of the property, not including adjustments in favor of the transferee.

(B) "Net proceeds" does not include adjustments in favor of the transferor that are disclosed on a settlement statement prepared in connection with the sale or exchange of the property.

(3) "Nonresident entity" means an entity that:

(A) Is not formed under the laws of the state; and

(B) Is not qualified by or registered with the Tax Commissioner to do business in the state.

(4) "Resident entity" means an entity that:

(A) Is formed under the laws of the state; or

(B) Is formed under the laws of another state and is qualified by or registered with the Tax Commissioner to do business in the state.

(5) "Total payment" means the net proceeds of a sale actually paid to a transferor, including the fair market value of any property transferred to the transferor.

(6) "Transfer pursuant to a deed in lieu of foreclosure" includes:

(A) A transfer by the owner of the property to:

(i) With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage;

(ii) With respect to a deed in lieu of foreclosure of a deed of trust, the holder of the debt or other obligation secured by the deed of trust or any designee, nominee, or assignee of the holder of the debt or other obligation secured by the deed of trust;

(iii) With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument; and

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(B) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value.

(7) "Transfer pursuant to a foreclosure of a mortgage, deed of trust, or other lien instrument" includes:

(A) With respect to the foreclosure of a mortgage:

(i) A transfer by the mortgagee, the assignee of the mortgage, the attorney named in the mortgage, or the attorney or trustee conducting a foreclosure sale pursuant to the mortgage to:

(I) The mortgagee or the assignee of the mortgage;

(II) Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage; or

(III) Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

(ii) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value;

(B) With respect to the foreclosure of a deed of trust:

(i) A transfer by the trustees, successor trustees, substituted trustees under the deed of trust, or trustees conducting a foreclosure sale pursuant to the deed of trust to:

(I) The holder of the debt or other obligation secured by the deed of trust;

(II) Any designee, nominee, or assignee of the holder of the debt secured by the deed of trust; or

(III) Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

(ii) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value; and

(C) With respect to the foreclosure of any other lien instrument:

(i) A transfer by the party authorized to make the sale to:

(I) The holder of the debt or other obligation secured by the lien instrument;

(II) Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument; or

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(III) Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

(ii) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value.

(b) (1) For every deed or other instrument of writing that effects a change of ownership on the land books of a county assessor and for which an amount is required to be withheld under subsection (c) of this section, the total payment shall be described on the form prescribed by the Tax Commissioner.

(2) The form required under subdivision (1) of this subsection shall be signed under oath by:

(i) The transferor of the property;

(ii) An agent of the transferor; or

(iii) The real estate reporting person, as defined under Section 6045 of the Internal Revenue Code.

(c) (1) Except as otherwise provided in this section, in a sale or exchange of real property and associated tangible personal property owned by a nonresident or nonresident entity occurring on during taxable years beginning on or after January 1, 2008, the real estate reporting person, as defined under Section 6045 of the Internal Revenue Code, shall withhold an amount equal to two and one-half percent of the total payment to a nonresident or nonresident entity. In lieu thereof, the real estate reporting person may withhold an amount equal to six and one-half percent of the estimated capital gain derived from the sale or exchange. The amounts withheld shall be paid to the Tax Commissioner by the real estate reporting person within thirty days of the date the amounts were withheld.

(2) The Tax Commissioner may propose alternatives to the percentages of payments or capital gains set forth in this section that may, based upon experience and application of this section, more accurately represent the value of capital gains subject to taxation in this state and, upon enactment of any such rules, those alternatives to the percentages shall supersede the percentages set forth in this subsection.

(d) Subsection (c) of this section does not apply when:

(1) A certification under penalties of perjury that the transferor is a resident of the state or is a resident entity is provided by each transferor in:

(A) The recitals or the acknowledgment of the deed or other instrument of writing transferring the property to the transferee; or

(B) An affidavit signed by the transferor or by an agent of the transferor that accompanies and is recorded with the deed or other instrument of writing transferring the property;

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(2) The transferor presents to the real estate reporting person, as defined under Section 6045 of the Internal Revenue Code, a certificate issued by the Tax Commissioner stating that:

(A) No tax is due from that transferor in connection with that sale or exchange of property;

(B) A reduced amount of tax is due from that transferor in connection with that sale or exchange of property and stating the reduced amount that should be collected by the real estate reporting person, as defined under Section 6045 of the Internal Revenue Code, before recordation or filing; or

(C) The transferor has provided adequate security to cover the amount required to be withheld under subsection (c) of this section;

(3) The property transfer is:

(A) A transfer pursuant to a foreclosure of a mortgage, deed of trust, or other lien instrument; or

(B) A transfer pursuant to a deed in lieu of foreclosure;

(4) The property is transferred by the United States, the state, or a unit or political subdivision of the state;

(5) A certification under penalties of perjury that the property being transferred is the transferor's principal residence is provided by each transferor in:

(A) The recitals or the acknowledgment of the deed or other instrument of writing transferring the property to the transferee; or

(B) An affidavit signed by the transferor or by an agent of the transferor that accompanies and is recorded with the deed or other instrument of writing transferring the property; or

(6) The property is transferred pursuant to a deed or other instrument of writing that includes a statement of consideration required in section six, article twenty-two of this code indicating that the consideration payable is zero.

(e) Except as provided in this section, the amounts described in subsection (c) of this section shall be collected by the real estate reporting person before the deed or other instrument of writing is presented for recordation or filing.

(f) (1) Amounts collected under subsection (c) of this section and paid over to the Tax Commissioner under subsection (e) of this section shall be deemed to have been paid to the Tax Commissioner on behalf of the transferor from whom the amounts were withheld.

(2) The transferor shall be credited with having paid the amounts for the taxable year in

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which the transaction that is the subject of the tax occurred against any tax owed by the transferor to the State of West Virginia on gains resulting from the transaction and is entitled to a refund from the Tax Commissioner of any amount in excess of the amount owed, except as provided in subsection (i) of this section.

(g) The real estate reporting person is subject to the requirements and penalties prescribed for the failure to pay the amount of a tax prescribed by article ten of this chapter for the failure to pay to the Tax Commissioner amounts withheld pursuant to provisions of this section.

(h) This section does not:

(1) Impose any tax on a transferor or affect any liability of the transferor for any tax; or

(2) Prohibit the Tax Commissioner from collecting any taxes due from a transferor in any other manner authorized by law.

(i) (1) The Tax Commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement and administer this section.

(2) The Tax Commissioner shall establish procedures for the issuance of the certificate referred to in subdivision (2), subsection (d) of this section.

(3) The Tax Commissioner shall establish a procedure by which a transferor may apply for an early refund of the tax collected under this section if the transferor establishes that no tax will be owed or less tax than collected will be owed.

(4) If the amount withheld and paid to the Tax Commissioner under this section equals or exceeds the amount of tax owed by the transferor, the transferor may, at his or her discretion, not file the return required by this article: Provided, That failure to file a return is deemed to be a final decision to not claim a refund for an overpayment of the tax imposed by this article, and no claim for refund shall be granted and no refund paid with relation to tax withheld pursuant to this section for which no return was filed by the taxpayer.

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## §11-21-72. Information statement for employee.

Every employer required to deduct and withhold tax under this article from the wages of an employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February 15 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the date on which the last payment of the wages is made, a written statement as prescribed by the Tax Commissioner showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the Tax Commissioner shall prescribe.

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## §11-21-73. Credit for tax withheld.

Wages upon which tax is required to be withheld shall be taxable under this article as if no withholding were required, but any amount of tax actually deducted and withheld under this article in any calendar year shall be deemed to have been paid to the Tax Commissioner on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the Tax Commissioner.

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**§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.**

(a) General. — Every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code except as otherwise provided in this section: *Provided*, That not later than January 31, 2019, and January 31 of each year thereafter, employers and payers shall submit to the Tax Commissioner the annual reconciliation of West Virginia income tax withheld, together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. Notwithstanding the provisions of this section, where the average quarterly amount deducted and withheld by any employer is less than $150 and the aggregate for the calendar year can reasonably be expected to be less than $600, the Tax Commissioner may by rule permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year.

(b) Annual returns and payments of withheld tax of certain domestic and household employees. — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041 shall, on or before January 31 next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner, and annually remit to the Tax Commissioner, West Virginia personal income taxes deducted and withheld for the employees together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. The Tax Commissioner may promulgate legislative or other rules pursuant to §29A-3-1 *et seq*. of this code for implementation of this subsection.

(c) Deposit in trust for Tax Commissioner. — Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of the tax in the separate account until payment over

to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

(d) Accelerated payment. —

(1) Every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under §11-21-74(a) of this code exceeded $100,000 shall remit the tax attributable to the first 15 days of June each year by June 23.

(2) For purposes of complying with §11-21-74(d)(1) of this code, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first 15 days of June or, at the employer's election, the employer may remit an amount equal to 50 percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under §11-21-74(a) of this code for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year and if that amount exceeds $100,000, the employer shall remit the tax attributable to the first 15 days of June each year by June 23, as provided in §11-21-74(d)(2) of this code.

(4) When an employer required to make an advanced payment of withholding tax under §11-21-74(d)(1) of this code makes out its return for the month of June, which is due by July 20, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under §11-21-74(d)(1) of this code.

(e) Effective upon passage, the provisions of §11-21-74(d) of this code shall no longer have any force or effect.

(f) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer by January 31, following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

(g) Any employer required to file a withholding return for 50 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code: *Provided*, That for any tax period beginning after December 31, 2017, any employer that uses a payroll service or is required to file a withholding return for 25 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of $25 per employee

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for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.

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## §11-21-75. Employer's liability for withheld taxes.

Every employer required to deduct and withhold tax under this article is hereby made liable for such tax. To the extent not inconsistent with the provisions of this article, all of the provisions of article ten of this chapter and section ninety-two of this article twenty-one, relating to assessment and collection of taxes, and to penalties, additions to tax and interest in respect thereto, shall apply to every employer required to withhold tax under this article. For such purposes any amount required to be withheld and paid over to the Tax Commissioner shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this article shall be held to be a special fund in trust for the Tax Commissioner. No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the Tax Commissioner in compliance or in intended compliance with this article.

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## §11-21-76. Employer's failure to withhold.

If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

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## §11-21-77. Extension of withholding to certain lottery winnings; lottery winnings source income.

(a) Lottery winnings subject to withholding. — Gross prizes, as defined in §29-22-15a of this code, of more than $5,000 from any lottery prize awarded by the West Virginia State Lottery Commission are subject to withholding under §11-21-1 et seq. of this code. The West Virginia State Lottery Commission in making any lump sum payment, annuity payment or installment payment of a lottery prize subject to withholding shall deduct and withhold from the payment a tax in an amount equal to six and one-half percent of the payment.

(b) Statement by recipient. — Every person who is to receive payment of a lottery prize subject to withholding shall furnish to the person making the payment, a statement made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and each person entitled to any portion of the payment.

(c) Coordination with other sections. — For the purposes of determining liability for payment of taxes and filing of returns, payments of a lottery prize subject to withholding shall be treated as if they were wages paid by an employer to an employee, but shall not be treated as compensation for personal services performed within this state for purposes of §11-21-40 and §11-21-41 of this code.

(d) Source Income. — (1) All lottery prizes awarded by the West Virginia State Lottery Commission shall be taxed as West Virginia source income and shall be subject to all state and federal income tax laws and rules and regulations. Pursuant to this section, state income taxes shall be withheld from prizes paid whenever federal income taxes are required to be withheld under the Internal Revenue Code.

(2) All prizes awarded by the West Virginia State Lottery Commission shall be taxed as West Virginia source income and taxable to nonresidents in accordance with §11-21-32 and §11-21-44 of this code and shall be subject to withholding in accordance with this section.

(3) The sourcing provisions of this section shall apply to all prizes awarded by the West Virginia State Lottery Commission, without regard to the form of payment or the period of time over which payments are made. Lump sum payments, installment payments, annuity payments, and winnings payments that are sold, assigned, transferred, or otherwise split, shared, or conveyed to or among parties other than the original prize winner retain their identity as prizes awarded by the West Virginia State Lottery Commission, and retain their character as West Virginia source income.

(e) Backup withholding. — Beginning July 1, 2012, every person who is required to file Internal Revenue Service Form W-2G, and who is subject to backup withholding under federal law, is subject to West Virginia backup withholding. The payor in making any payment of a gambling prize subject to backup withholding shall deduct and withhold from

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the payment a tax in an amount equal to six and one half percent of the payment.

(f) The changes made to this section during the 2019 regular session of the Legislature shall take effect immediately upon the effective date of this section.

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**§11-21-78.**

Reserved for future use.

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**§11-21-79.**

Reserved for future use.

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**§11-21-80.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-81.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-82.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-83.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-84.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-85.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-86.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-87.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-88.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-89.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-90.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-91.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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**§11-21-92.**

Repealed.

Acts, 1984 Reg. Sess., Ch. 170.

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## §11-21-93. Personal income tax reserve fund.

(a) Of the revenue collected under this article the State Treasurer shall credit the amount as the Tax Commissioner may determine to be necessary for refunds to which taxpayers shall be entitled under this article to the personal income tax reserve fund described in subsection (b) of this section. The State Treasurer shall credit all remaining interest, penalties and taxes collected under this article to the General Revenue Fund of the State Treasury.

(b) The fund established by the prior enactment of this section is hereby reestablished as an account in the State Treasury designated the "personal income tax reserve fund". The fund shall be administered by the secretary of administration and expended only for the purpose specified in subsection (c) of this section. Notwithstanding any provision of section two, article two, chapter twelve of this code to the contrary, the moneys of the fund are not part of the General Revenue Fund of the State Treasury.

(c) The moneys of the personal income tax reserve fund must be expended to make timely refunds of moneys to which taxpayers may be entitled under this article as certified by the Tax Commissioner. Amounts in the fund which are found from time to time to exceed funds needed for the purposes set forth in this section may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

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## §11-21-94. Effective date; severability.

(a) Effective date. -- The provisions of this article shall take effect immediately. Such provisions shall apply to all taxable years ending on or after December 31, 1961, and to the entirety of each such year, including that part which has elapsed prior to the effective date of this article. Such provisions shall also apply to taxable years beginning prior to and ending in the year 1961, but the tax imposed for any such year shall be one twelfth of a tax for the full year multiplied by the number of months elapsed from January 1, 1961, until the end of the taxable year.

(b) Severability. -- If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

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## §11-21-94a. Effective date.

The provisions of this article as amended or added by this act shall take effect on July 1, 1988, and apply to all taxable years ending after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.

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## §11-21-95. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article twenty-one with like effect as if said act were applicable only to the tax imposed by this article twenty-one and were set forth in extenso in this article twenty-one.

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# §11-21-96. Dedication of personal income tax proceeds.

(a) There is hereby dedicated an annual amount of $45 million from annual collections of the tax imposed by this article for payment of the unfunded liability of the current Workers' Compensation Fund. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning in January of 2006, $45 million from collections of the tax imposed by this article shall be deposited each calendar year to the credit of the old fund created in article two-c, chapter twenty-three of this code, in accordance with the following schedule. Each calendar month, except for July, August and September each year, $5 million shall be transferred, on or before the twenty-eighth day of the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code.

(c) The transfers required by subsection (b) of this section shall cease on and after February 1, 2016. For fiscal years beginning on and after July 1, 2016, an annual amount of $30 million from annual collections of the tax imposed by this article shall be dedicated for payment of the unfunded liability of the West Virginia Retiree Health Benefit Trust Fund. The $30 million transferred pursuant to this subsection shall be transferred into the West Virginia Retiree Health Benefit Trust Fund by transferring $5 million each month for the following months of each year: October, November, December, January, February and March, until the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later: Provided, That no transfer shall be made under this subdivision in the months of February and March of fiscal year 2016. Transfers shall thereafter resume and be made in October, November, December, January, February and March of fiscal year 2017 and thereafter. No transfer into the West Virginia Retiree Health Benefit Trust Fund pursuant to this subdivision shall be made after the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later.

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## §11-21-97. Tax credit for employers providing child care for employees.

(a) *Definitions*. — As used in this section, the term:

(1) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate;

(2) "Cost of operation" means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child-care facilities: *Provided*, That the term cost of operation shall exclude the cost of any property that is qualified child-care property.

(3) "Division" or "Tax Division" means the West Virginia State Tax Division.

(4) "Employer" means any employer upon whom an income tax is imposed by this article.

(5) "Employer provided" refers to child care offered on the premises of the employer.

(6) "Employer sponsored child-care facility" refers to a third-party licensed child-care services facility whose operational costs are financially supported by one or more employers through direct payments, contracts, or subsidies. An employer sponsored child-care facility may be located anywhere within the state of West Virginia and shall not be subject to proximity or employee usage thresholds.

(7) "Premises of the employer" refers to any location within the State of West Virginia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child-care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer.

(8) "Qualified child-care property" means all real property, other than land, and tangible personal property purchased or acquired on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child-care facility, but only if:

(A) The children who use the facility are primarily children of employees of:

(i) The taxpayer and other employers in the event that the child-care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of section 1504(a) of the Internal Revenue Code; and

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such

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qualified child-care property placed in service prior to taxable years beginning on or after January 1, 2022.

Qualified child-care property includes, but is not limited to, amounts expended on building, improvements, and building improvements and furniture, fixtures, and equipment directly related to the operation of child-care property as defined in this section.

(9) "Recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this section for all taxable years preceding the recapture year, whether or not such credits were used.

(10) "Recapture event" means any disposition of qualified child-care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child-care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child-care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(11) "Recapture percentage" refers to the applicable percentage set forth in the following table:

If the recapture event occurs within-The recapture percentage is:

Five full years after the qualified child-care property is

placed in service .....100

The sixth full year after the qualified child-care property is

placed in service .....90

The seventh full year after the qualified child-care property

is placed in service .....80

The eighth full year after the qualified child-care property is

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placed in service .....70

The ninth full year after the qualified child-care property is

placed in service .....60

The tenth full year after the qualified child-care property is

placed in service .....50

The eleventh full year after the qualified child-care property

is placed in service .....40

The twelfth full year after the qualified child-care property

is placed in service .....30

The thirteenth full year after the qualified child-care

property is placed in service .....20

The fourteenth full year after the qualified child-care

property is placed in service .....10

Any period after the close of the fourteenth full year after

the qualified child-care property is placed in service .....0

(12) "Recapture year" means the taxable year in which a recapture event occurs with respect to qualified child-care property.

(b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child-care property and for each of the ensuing four taxable years following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified child-care property jointly owned by two or more unaffiliated employers, each employer's credit is limited to that employer's respective investment in the qualified child-care property.

(c) *Limitations on Capital Investment Credit.* — The tax credit allowable under subsection (b) of this section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be



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carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit allowed under subsection (b) of this section, when combined with any such tax credit allowed under subsection (e) of this section, including any carryover of such credits from a prior taxable year, exceed 100 percent of the taxpayer's income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer's West Virginia income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child-care facility;

(B) The amount of qualified child-care property acquired during the taxable year and the cost of such property;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified child-care property acquired in prior taxable years and the cost of such property;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried forward to subsequent tax years; and

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(d) *Recapture of credit*. — If a recapture event occurs with respect to qualified child-care property:

(1) The credit otherwise allowable under subsection (b) of this section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (b) of this section shall be recaptured as follows:

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(A) Any carryover attributable to such credits pursuant to subdivision (1), subsection (c) of this section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account pursuant to paragraph (A) of this subdivision; and

(C) The tax imposed pursuant to this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A) and (B) of this subdivision, as applicable.

(e) *Credit for operating costs*. — In addition to the tax credit provided under subsection (b) of this section, a tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 50 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(f) *Limitations on credit for operating costs*.— The tax credit allowed under subsection (e) of this section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) of this section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the taxable year as determined without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the division the names of the employees, the name of the child-care provider, and such other information as may be required by the division to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this section.

(g) *Rules*. — The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

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