

# WEST VIRGINIA CODE: §11-21A-3

## **§11-21A-3. Reporting federal adjustments — partnership level audit and administrative adjustment request.**

(a) General. — Except for adjustments required to be reported for federal purposes pursuant to I.R.C. § 6225(a)(2), and the distributive share of adjustments that have been reported as required by §11-21A-2 of this code, partnerships and partners shall report final federal adjustments arising from a partnership level adjustment, or an administrative adjustment request, and make payments as required by this section of the code.

(b) State partnership representative. —

(1) With respect to an action required or permitted to be taken by a partnership under this section of the code and a proceeding under §11-10A-1 et seq. of this code with respect that action, the state partnership representative for the reviewed year has the sole authority to act on behalf of the partnership, and its direct partners and indirect partners shall be bound by those actions.

(2) The state partnership representative for the reviewed year is the partnership's federal partnership representative unless the partnership designates in writing another person as its state partnership representative.

(3) The Tax Commissioner may establish reasonable qualifications for and procedures for designating a person, other than the federal partnership representative, to be the state partnership representative.

(c) Reporting and payment requirements for partnerships subject to a final federal adjustment and direct partners. — Final federal adjustments subject to the requirements of §11-21A-3 of this code, except for those subject to a properly made election under §11-21A-3(d) of this code, shall be reported as follows:

(1) No later than 90 days after the final determination date, the partnership shall:

(A) File a completed federal adjustment report with the Tax Commissioner, including information as required by the Tax Commissioner; and

(B) Notify each of its direct partners of their distributive share of the final federal adjustments including information as required by the Tax Commissioner; and

(C) File an amended composite return for direct partners as permitted under §11-21-51a of this code and/or an amended withholding return for direct partners under §11-21-71a of this code and pay the additional amount due under §11-21-1 et seq. and §11-24-1 et seq. of this code, as applicable, that would have been due had the final federal adjustments been reported properly as required.

(2) Except as provided in §11-21A-4 of this code for minimal tax liabilities, no later than 180 days after the final determination date, each direct partner that is taxed under §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, shall:

(A) File a federal adjustment report reporting their distributive share of the adjustments reported to them under §11-21A-3(c)(1)(B) of this code as required by West Virginia law; and

(B) Pay any additional amount of tax due as if final federal adjustments had been properly reported, plus any additions to tax and interest due under §11-10-1 et seq. of this code and less any credit for related amounts paid or withheld and remitted on behalf of the direct partner under §11-21A-3(c)(1)(C) of this code.

(d) Election — partnership pays. — Subject to the limitations in this subsection, an audited partnership making an election under §11-21A-3(d) of this code shall:

(1) No later than 90 days after the final determination date, file a completed federal adjustment report, including information as required by rule or instruction of the Tax Commissioner, and notify the Tax Commissioner that it is making the election under §11-21A-3(d) of this code;

(2) No later than 180 days after the final determination date, pay an amount, determined as follows, in lieu of taxes owed by its direct partners and indirect partners:

(A) Exclude from final federal adjustments the distributive share of these adjustments reported to a direct exempt partner not subject to tax under § 11-21-1 et seq. or §11-24-1 et seq. of this code;

(B) For the total distributive shares of the remaining final federal adjustments reported to direct corporate partners subject to tax under §11-24-1 et seq. of this code, and to direct exempt partners subject to tax under §11-24-1 et seq. of this code, apportion and allocate the adjustments as provided in §11-24-7 of this code, as applicable, and multiply the resulting amount by the highest tax rate under §11-24-1 et seq. of this code;

(C) For the total distributive shares of the remaining final federal adjustments reported to nonresident direct partners subject to tax under §11-21-1 et seq. of this code, determine the amount of the adjustments which is West Virginia source income under §11-21-30 of this code, and multiply the resulting amount by the highest tax rate under §11-21-1 et seq. of this code;

(D) For the total distributive shares of the remaining final federal adjustments reported to tiered partners:

(i) Determine the amount of the adjustments which is of a type that it would not be subject to sourcing to West Virginia under §11-21-1 et seq. of this code; allocate and apportion the income as provided in §11-21-1 et seq. of this code; and then determine the portion of this amount that would be sourced to this state applying these rules.

(ii) Determine the amount of such adjustments which is of a type that it would not be subject to sourcing to West Virginia by a nonresident under §11-21-30 of this code.

(iii) Determine the portion of the amount determined in §11-21A-3(c)(2)(D)(ii) of this code that can be established under rule issued by the Tax Commissioner, to be properly allocable to nonresident indirect partners or other partners not subject tax on the adjustments; or that can be excluded under procedures for modified reporting and payment method allowed under §11-21A-3(f) of this code.

(E) Multiply the total of the amounts determined in §11-21A-3(d)(2)(D)(i) and (ii) of this code reduced by the amount determined in §11-21A-3(d)(2)(D)(iii) of this code by the highest tax rate under §11-21-1 et seq. of this code that applies to individuals and/or estates and trusts;

(F) For the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to tax under §11-21-1 et seq. of this code, multiply that amount by the highest tax rate under §11-21-1 et seq. of this code that applies to individuals and/or estates and trusts;

(G) Add the amounts determined in §11-21A-3(d)(2)(B), (D), (E), and (F) of this code;

(3) Final federal adjustments subject to this election exclude:

(A) The distributive share of final audit adjustments that under §11-24-1 et seq. of this code must be included in the unitary business income of any direct or indirect corporate partner, provided that the audited partnership can reasonably determine this amount; and

(B) Any final federal adjustments resulting from an administrative adjustment request.

(4) An audited partnership not otherwise subject to any reporting or payment obligation to this state that makes an election under §11-21A-3(d) of this code consents to be subject to this state's laws related to reporting, assessment, payment, and collection of West Virginia income tax calculated under the election.

(e) Tiered partners. — The direct and indirect partners of an audited partnership that are tiered partners, and all of the partners of those tiered partners that are subject to tax under §11-21-1 et seq. or §11-24-1 et seq. of this code, as appropriate, are subject to the reporting and payment requirements of §11-21A-3(b) of this code and the tiered partners are entitled to make the elections provided in §11-21A-3(c) and (e) of this code. The tiered partners or their partners shall make required reports and payments no later than 90 days after the time for filing and furnishing statements to tiered partners and their partners as established under I.R.C. Section 6226 and the regulations thereunder. The Tax Commissioner may promulgate rules under §29A-3-1 et seq. of this code to establish procedures and interim time periods for the reports and payments required by tiered partners and their partners and for making the elections under §11-21A-3 of this code.

(f) Modified reporting and payment method. — Under procedures adopted by and subject to

the approval of the Tax Commissioner in his or her sole discretion, an audited partnership or tiered partner may enter into an agreement with the Tax Commissioner to utilize an alternative reporting and payment method, including applicable time requirements or any other provision of §11-21A-3 of this code, if the audited partnership or tiered partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, additions to tax, and interest due under the provisions of §11-21A-3 of this code. Application for approval of an alternative reporting and payment method shall be made by the audited partnership or tiered partner within the time for election as provided in §11-21A-3(d) or §11-21A-3(e) of this code as appropriate.

(g) Effect of election by audited partnership or tiered partner and payment of amount due. —

(1) The election made pursuant to §11-21A-3(d) or §11-21A-3(f) of this code is irrevocable, unless the Tax Commissioner, in his or her sole discretion, determines otherwise.

(2) If properly reported and paid by the audited partnership or tiered partner, the amount determined in §11-21A-3(c) of this code, or similarly under an optional election under §11-21A-3(f) of this code, will be treated as paid in lieu of taxes owed by its direct and indirect partners, to the extent applicable, on the same final federal adjustments. The direct partners or indirect partners may not take any deduction or credit for this amount or claim a refund of this amount in this state. Nothing in §11-21A-3(f) of this code may preclude a direct resident partner from claiming a credit against taxes paid to this state pursuant to §11-21-1 et seq. of this code, any amounts paid by the audited partnership or tiered partner on the resident partner's behalf to another state in accordance with the provisions of §11-21-1 et seq. of this code allowing credit for taxes paid to another state.

(h) Failure of audited partnership or tiered partner to report or pay. — Nothing in §11-21A-3 of this code prevents the Tax Commissioner from assessing direct partners, or indirect partners, for taxes they owe, using the best information available to the commissioner, if a partnership or tiered partner fails to timely make any report or payment required by §11-21A-3 of this code for any reason.