WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. H633

(By Delegates Kiss and Burk)

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Passed March 6, 1992

In Effect Ninety Days From Passage
AN ACT to repeal sections thirty-one, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven-a and fifty-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eighteen-a, article ten of said chapter eleven; to further amend said article ten by adding thereto a new section, designated section nineteen-a; to amend and reenact sections eighteen, thirty-two, thirty-seven, thirty-eight, thirty-nine, fifty-one-a and seventy-one-a, article twenty-one of said chapter eleven; to further amend said article twenty-one by adding thereto two new sections, designated sections thirty and forty-five; and to amend and reenact section thirteen-b, article twenty-four of said chapter eleven, all relating generally to administration and collection of West Virginia personal and corporation net income taxes from nonresident taxpayers and others; changing method by which personal income tax of nonresidents and part-year residents is determined and, as to such change in method: Specifying effective date, preserving prior law for prior taxable years, and making conforming changes in other provisions of personal income tax law necessary for implementation, administration and enforcement of this change in tax computation methodology; defining West Virginia source income in the case of nonresidents and part-year residents; making conforming changes in other statu-
Enr. H. B. 4633]

...tory provisions pertaining to how West Virginia source income of nonresidents and part-year residents is determined; providing for partnerships, S corporations, estates and trusts to withhold income tax on distributions, both actual and deemed, of West Virginia source income to nonresidents and, as to such, changing rate of withholding to single uniform rate; providing for payment of withholding tax by pass-through entities and for administration and collection by tax commissioner, including exceptions, limitations, special rules, definitions, and effective date; requiring nonpartnership ventures to file information returns pertaining to West Virginia source income; allowing nonresident individuals who are partners, S corporation shareholders, or beneficiaries of an estate or trust having West Virginia source income to file composite nonresident personal income tax returns and, as to such, changing the composite return rate of tax, defining terms and specifying effective date; changing the rules for imposing, collecting and administering additions to tax for underpayment of estimated tax, with such new rules to apply to all taxpayers and to certain other taxes collected by tax commissioner for taxable years beginning after specified date; imposing money penalties for failure to file certain information returns including but not limited to those filed by pass-through entities, and for failure to file complete and accurate information returns, and, as to such, providing rules for application, waiver, exception and effective date, and for administration and collection of such penalties; eliminating specific money penalty for failure to file S corporation income tax returns, with such penalty being replaced and superseded by generic penalty applicable to such failures; eliminating requirement that S corporation information returns provide certain information, leaving content of information return to information required by tax commissioner; specifying effective for all provision dates; and preserving prior law for prior taxable years.

Be it enacted by the Legislature of West Virginia:

That sections thirty-one, thirty-three, thirty-four, thirty-five,
thirty-six, thirty-seven-a and fifty-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eighteen-a, article ten of said chapter eleven be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section nineteen-a; that sections eighteen, thirty-two, thirty-seven, thirty-eight, thirty-nine, fifty-one-a and seventy-one-a, article twenty-one of said chapter eleven be amended and reenacted; that said article twenty-one be further amended by adding thereto two new sections, designated sections thirty and forty-five; and that section thirteen-b, article twenty-four of said chapter eleven be amended and reenacted, all to read as follows:

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated tax.

(a) Additions to tax. — Except as otherwise provided in this section, in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under any article or section administered by this article, an amount determined by applying the rate established under section seventeen or seventeen-a of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(b) Amount of underpayment. — For purposes of subsection (a), the amount of the underpayment shall be the excess of the amount determined under subdivision (1) over the amount determined under subdivision (2).

(1) The amount of the installment required to be paid on or before the due date for the installment, if the estimated tax due for the taxable year were an amount equal to ninety percent of the tax shown on the annual return for the taxable year divided by the number of installments taxpayer was required to make for the taxable year, or, if no return was filed, ninety percent of the tax for such year divided by the number of installment payments taxpayer was required to make for the taxable year.
(2) The amount, if any, of the installments paid on or before the last date prescribed for payment of that installment.

(c) Period of underpayment. — The period of underpayment of an installment shall run from the date the installment was required to be paid (due date) to whichever of the following dates is the earlier:

(1) The due date of the annual return following the close of the taxable year for which the installment was due (determined without regard to any extension of time for filing such annual return; or

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision (2), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) Exception. — Notwithstanding the provisions of the preceding subsections, the additions to tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser:

(1) Prior year's tax. — One hundred percent of the tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months;

(2) Annualized tax. — In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection and under subsection (b) of this section, then the amount of such required installment shall be the annualized income installment. For purposes of this subdivision (2),
there shall be four required installments for each taxable year and the “annualized income installment” is the difference (if any) determined by subtracting the amount determined under paragraph (B) from the amount determined under paragraph (A). When making these computations, the rules in paragraph (C) shall be followed:

(A) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the first installment;

(ii) For the first three months of or the first five months of the taxable year, in the case of the second installment;

(iii) For the first six months or the first eight months of the taxable year, in the case of the third installment; and

(iv) For the first nine months or for the first eleven months of the taxable year, in the case of the fourth installment.

(B) The aggregate amount of any prior required installments for the taxable year.

(C) Special rules. — For purposes of this subdivision (2):

(i) Annualization. — Taxpayer’s taxable income shall be placed on an annualized basis in the same manner that taxable income is annualized for federal income tax purposes for the taxable year.

(ii) Applicable percentage. — The applicable percentage shall be determined from the following table:

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<th>In the case of the following required installments:</th>
<th>The applicable percentage is:</th>
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<td>1st ..................................................................</td>
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(e) Additional exceptions.

(1) Where tax amount is small. — No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable for withheld tax, is less than two hundred fifty dollars.

(2) Where individual has no personal income tax liability for preceding taxable year. — No addition to tax shall be imposed under subsection (a) for any taxable year if:

(A) The individual's preceding taxable year was a taxable year of twelve months,

(B) The individual did not have any West Virginia personal income tax liability for the preceding taxable year,

(C) The individual was a citizen or resident of the United States throughout the preceding taxable year, and

(D) The individual's West Virginia personal income tax liability for the current taxable year is less than five thousand dollars.

(3) Waiver in certain cases. — No addition to tax shall be imposed under subsection (a) with respect to any underpayment if and to the extent the tax commissioner determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(f) Tax computed after application of credits against tax. — For purposes of this section, the term “tax” means the amount of any annual tax or fee administered under this article that is generally payable in two or more installment payments during the taxable year, minus the amount of credits allowable against such tax or fee, other than taxes withheld from the taxpayer under section seventy-one or seventy-one-a, article twenty-one of this chapter (relating to taxes withheld on wages, or from distributions of pass-through income to
nonresident partners, S corporation shareholders or beneficiaries of an estate or trust).

(g) Application of section in case of personal income tax withheld on wages.

(1) In general. — For purposes of applying this section, the amount of the credit allowed under section seventy-one, article twenty-one of this chapter, for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed to have been paid on each installment payment due date for such taxable year, unless the taxpayer establishes the specific dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application. — The taxpayer may apply subdivision (1) separately with respect to:

(A) Wage withholding, and

(B) All other amounts withheld for which credit is allowed under section seventy-one of article twenty-one.

(h) Application of section in case of income tax withheld by pass-through entities from distributions to nonresidents. — For purposes of applying this section, the amount of credit allowed under section seventy-one-a, article twenty-one of this chapter to a nonresident distributee of a pass-through entity, shall be deemed to be a payment of estimated income tax for the taxable year of the nonresident distributee, and an equal part of such amount shall be deemed (only for purposes of this section) to have been paid on each installment due date for the taxable year of the distributee, unless the distributee establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(i) Special rule where personal income tax return filed on or before January 31st. — If on or before the last day of the first month following the end of the taxable year,
the taxpayer files his or her annual personal income tax
return for that taxable year and pays in full the amount
computed on the return as payable, then no addition to
tax shall be imposed under subsection (a) with respect
to any underpayment of the fourth required installment
for that taxable year.

(j) *Special rules for farmers.* — For purposes of this
section, if an individual is a farmer for any taxable year:

(1) There is only one required installment for that
taxable year,

(2) The due date for such installment is the fifteenth
day of January of the following taxable year,

(3) The amount of such installment shall be equal to
the required annual payment determined under subsec-
tion (b) of this section by substituting "sixty-six and two-
thirds percent" for "ninety percent", and

(4) Subsection (h) shall be applied:

(A) By substituting "the first day of March" for the
phrase "the thirty-first day of January", and

(B) By treating the required installment described in
this subdivision (1) of this subsection as the fourth
required installment.

(k) *Fiscal years and short years.*

(1) *Fiscal years.* — In applying this section to a
taxable year beginning on any date other than the first
day of January, there shall be substituted, for the
months specified in this section, the months of the fiscal
year that correspond thereto.

(2) *Short taxable year.* — The application of this
section to taxable years of less than twelve months shall
be in accordance with regulations prescribed by the tax
commissioner.

(1) *Reserved.*

(m) *Estates and trusts.*

(1) *In general.* — Except as otherwise provided in this
subsection, this section shall apply to any estate or trust.
(2) Exception for certain estates and certain trusts. —

With respect to any taxable year ending before the date two years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent, or

(B) Any trust all of which was treated for federal income tax purposes as owned by the decedent, and to which the residue of the decedent's estate will pass under his or her will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration).

(3) Special rule for annualizations. — In the case of any estate or trust to which this section applies, subsection (d)(2)(A) shall be applied by substituting “ending before the date one month before the due date of the installment” for the phrase “ending before the due date for the installment”.

(n) Regulations.— The tax commissioner may prescribe such regulations as the commissioner deems necessary to carry out the purpose of this section. This includes, but is not limited to, equitable regulations allowing payment of adjusted seasonal installments in lieu of annualized income installments when the commissioner determines, based on known facts and circumstances, that payment of the annualized income installment will result in significant hardship to the taxpayer due to the seasonal nature of taxpayer's business, and equitable regulations for payment of estimated personal income tax by an individual who is:

(1) An employee, (2) employed in another state for some portion or all of the taxable year, and (3) required to pay personal income taxes to such other state on (or measured by) wages earned in that state, for which credit is allowed under section twenty, article twenty-one of this chapter.

(o) Effective date. — This section as amended in the year one thousand nine hundred ninety-two, shall apply to taxable years beginning after the thirtieth day of June, one thousand nine hundred ninety-two, and this section as in effect on the first day of January, one
253 thousand nine hundred ninety-two, is preserved and
254 shall apply to taxable years beginning before the first
255 day of July, one thousand nine hundred ninety-two.

§11-10-19a. Failure to file correct information returns.

   (a) Imposition of penalty. — In addition to any
criminal penalty imposed by article nine of this chapter
for willful failure to file required return or supply
information or for knowingly filing false or fraudulent
return, in the case of a failure described in subsection
(b) by any person with respect to an information return,
such person shall pay a penalty of fifty dollars for each
information return with respect to which such failure
occurs, but the total amount imposed by this section on
such person for all such failures during any calendar
year shall not exceed one hundred thousand dollars.

   (b) Failures subject to penalty. — For purposes of
subsection (a), the failures described in this subsection
are:

   (1) Any failure to file an information return with the
tax commissioner on or before the required filing date,
and

   (2) Any failure to include all of the information
required to be shown on the return or the inclusion of
incorrect information.

   (c) Reduction of penalty where correction in specified
period.

   (1) Correction within thirty days. — If any failure
described in subsection (b) is corrected on or before the
day, thirty days after the required filing date, the
penalty imposed by subsection (a) shall be fifteen dollars
in lieu of fifty dollars, and the total amount imposed on
the person for all such failures during any calendar year
which are so corrected shall not exceed twenty-five
thousand dollars.

   (2) Failures corrected by August 1st. — If any failure
described in subsection (b) is corrected after the
thirtieth day referred to in subdivision (1) but on or
before the first day of August of the calendar year in
which the required filing date occurs, the penalty imposed by subsection (a) shall be calculated using thirty dollars in lieu of fifty dollars and the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed fifty thousand dollars.

(d) **Exception for de minimis failures to include all required information.**

(1) **In general.** — If an information return is filed with the tax commissioner, but there is a failure to include all of the information required to be shown on the return or there is inclusion of incorrect information, and such failure or error is corrected on or before the first day of August of the calendar year in which the required filing date occurs, then for purposes of this section, such return shall be treated as having been filed with all of the correct required information.

(2) **Limitation.** — The number of information returns to which subdivision (1) applies for any calendar year shall not exceed the greater of: (A) ten, or (B) one-half of one percent of the total number of information returns required to be filed with the tax commissioner by the person during the calendar year.

(e) **Penalty in case of intentional disregard.** — If one or more failures described in subsection (b) are due to intentional disregard of the filing requirement or the correct information reporting requirement then, with respect to such failure, subsections (c) and (d) shall not apply and the penalty imposed under subsection (a) shall be one hundred dollars, or, if greater, ten percent of the aggregate amount of the items required to be reported correctly. When the amount of penalty is determined under this subsection, the one hundred thousand dollar limitation under subsection (a) shall not apply, and such penalty shall not be taken into account in applying such limitation (or any similar limitation under subsection (c)) to penalties not determined under this subsection (e).

(f) **Reasonable cause waiver.** — No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause
and not due to willful neglect.

(g) Payment of penalty. — Any penalty imposed by this section shall be paid on notice and demand by the tax commissioner and in the same manner as tax.

(h) Definitions. — For purposes of this section:

1. (1) Information return. — The term "information return" means any return required by:
   a. Subsection (a)(2) or (4), section fifty-one, article twenty-one of this chapter (relating to estates and trusts),
   b. Subsection (b), section fifty-eight, article twenty-one of this chapter (relating to partnerships),
   c. Subsection (c), section fifty-eight, article twenty-one of this chapter relating to certain information at source, and
   d. Section thirteen-b, article twenty-four of this chapter relating to S corporations.

2. (2) Required filing date. — The term "required filing date" means the date prescribed for filing an information return with the tax commissioner determined with regard to any extension of time for filing.

(i) Effective date. — The provisions of this section shall apply to information returns required to be filed for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one.

ARTICLE 21. PERSONAL INCOME TAX.

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

The West Virginia taxable income of a resident estate or trust means its federal taxable income for the taxable year as defined in the laws of the United States and section nine of this article for the taxable year, with the following modifications:

1. (1) There shall be subtracted six hundred dollars as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal
(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.

(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 one thousand nine hundred eighty-six, 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 the thirty-first day of December, one thousand nine hundred ninety.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

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

(a) Computation of tax. — For taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one, the tax due under this article on taxable income derived from sources in this state by a nonresident individual, estate, or trust 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.

(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.

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

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

(2) In the case of a trust, "federal adjusted gross
income" shall be its "federal adjusted gross income" for
the taxable year increased by the amount of any
includible 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.

(c) Special rules for part-year residents. — For
purposes of subdivision (1) of subsection (a), the "federal
adjusted gross income" of a part-year resident individ-
ual shall be taxpayer's federal adjusted gross income for
the taxable year, as defined in section nine of this
article, increased or decreased, as the case may be, by
the items accrued under subdivision (1), subsection (b),
section forty-five of this article, 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 subdi-
vision (2), subsection (b) of said section forty-five, 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
(e), with the applicable modifications described in
section forty-five of this article.

(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.

(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. — The provisions of this section shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one. 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.

§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, 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.

(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.

(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.

(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 one thousand nine hundred ninety-two shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one. 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.

§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.

(1) For a partner’s distributive share of items, see subsection (a) of section seventeen.

(2) The character of partnership items for a nonresident partner shall be determined under subsection (b) of section seventeen.
(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.

(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.

(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.

(f) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-two shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-two. As to prior taxable years the provisions of this section and of section thirty-seven-a, as then in effect, are fully and completely preserved.

§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 (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 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 commis-
ioner, 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 one thousand nine
hundred ninety-two shall apply to taxable years begin-
ing after the thirty-first day of December, one
thousand nine hundred ninety-one. As to prior taxable
years this section, as then in effect, is fully and
completely preserved.

§11-21-39. Share of nonresident estate, trust or benefi-
ciary 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, in estate or trust income, gain, loss and
deduction from West Virginia sources shall be deter-
mined 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 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 purpose 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 appropriate and equitable, on such terms and conditions as the commissioner may
(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 one thousand nine hundred ninety-two shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one.

§11-21-45. 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 subse-
quent period.

(4) The accruals under this subsection shall not be
required if the individual files with the tax commis-
sioner 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 the thirty-
first day of December, one thousand nine hundred
ninety-one, as amended. For taxable years that began
prior to the first day of January, one thousand nine
hundred ninety-two, 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.

§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 fifty dollars, 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, 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 section five-d, article ten of this chapter; the term includes block filing: Provided, That nothing in this section shall 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 one thousand
nine hundred ninety-two, shall apply to composite
returns filed after the thirty-first day of December, one
thousand nine hundred ninety-two.

§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, includ-
ing, 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 share-
holder, 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, under subsection (a) shall be equal to four percent
of the effectively connected taxable income of the
partnership, S corporation, estate, or trust, 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 shall 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 (1), a person is exempt from the tax imposed by this article only if such person is, by reason of such 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 article twenty-four of this chapter; or

(2) On distributions to a corporation which is exempt from the tax imposed by article twenty-four of this chapter. For purposes of this subdivision (2), a corporation is exempt from the tax imposed by article twenty-four of this chapter 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 the tax imposed by article twenty-four of this chapter 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 article twenty-four of this chapter; 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 subdivision (3) 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 nonpartnerships 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 subsection (c), section fifty-eight of this article, under such regulations 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; (B) the name, address and taxpayer identification number of persons receiving fixed or determinable gains, profits or income from the nonpartnership venture.
(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 fifteenth day of the third month following the close of the taxable year of the S corporation along with the annual information return due under article twenty-four of this chapter, unless paragraph (C) applies.

(B) Partnerships, estates and trusts. — The fifteenth 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) applies.

(C) Composite returns. — The fifteenth day of the fourth month of the taxable year with the composite return filed under section fifty-one-a of this article.

(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) does not extend the time for paying the amount withholding tax due under this section. In this situation, the pass-through entity shall pay, by the date specified in subdivision (1), at least ninety percent of the withholding tax due for the taxable year, or one hundred percent of the tax paid under this section for the prior taxable year, if such taxable year was a taxable year of twelve 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). If the balance due is paid by the last day of the extension period for filing such return and the amount of tax due with such return is ten percent or less of the tax due under this section for the taxable year, no additions to tax shall be imposed under article ten of this chapter 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 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 section thirty-two of this article and such regulations as the tax commissioner may prescribe, whether such amount is actually distributed or is deemed 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 article twenty-four of this chapter, the credit allowed by this section shall be applied against the distributee corporation's liability for tax under article twenty-four of this chapter.

(2) Credit treated as distributed to partner, shareholder or beneficiary. — Except as provided in regulations, 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 such partner by such partnership, or to such shareholder by such S corporation, or to such beneficiary by such estate or trust, on the earlier of:

(A) The day on which such tax was paid to the tax
comissioner by the partnership, S corporation, estate, or trust; or

(B) The last day of the taxable year for which such tax was paid by the partnership, S corporation, estate, or trust.

(g) Regulations. — The tax commissioner shall prescribe such regulations 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 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 such 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 must be filed with the West Virginia return filed under this article (or article twenty-four of this chapter in the case of S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement must be furnished to each nonresident distributee on or before the due date of the pass-through entity's return under this article or article twenty-four of this chapter 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 the thirty-first day of December, one thousand nine
hundred ninety-one, 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 articles nine and ten of this chapter. 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, shall have a right of action against the partnership, S corporation, estate, or trust, in respect to any moneys withheld from such 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 such tax may be credited is paid, the tax so required to be deducted and withheld under this section shall not be collected from the partnership, S corporation, estate, or trust, as the case may be, but the partnership, S corporation, estate, or trust, shall not be relieved from liability for any penalties, interest, on additions to tax otherwise applicable in respect of such 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 such nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or article twenty-four of this chapter 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 article twenty-four of this chapter 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 must 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).

(3) After an agreement is filed with the pass-through
entity, that agreement may be revoked by a distributee
only in accordance with regulations promulgated by the
tax commissioner.

(4) Upon receipt of such an agreement properly
executed by the nonresident distributee, the pass-
through entity shall 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 such 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 article twenty-four of this chapter in the
case of 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.
(1) **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.

(3) **Internal Revenue Code.** — The term “internal revenue code” means the Internal Revenue Code of 1986, as amended through the date specified in section nine of this article.

(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.

(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
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the Internal Revenue Code, is not treated as a partner-
ship for the taxable year for federal income tax
purposes.

(7) Taxable period. — The term “taxable period”
means, in the case of an S corporation, any taxable year
or portion of a taxable year during which a corporation
is an S corporation.

(8) 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 the thirty-first day of December, one
thousand nine hundred ninety-one.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-13b. Information return for corporations electing
to be taxed under subchapter S.

Every corporation electing to be taxed under subchap-
ter S of the Internal Revenue Code of 1986, as amended,
shall on or before the fifteenth day of the third month
following the close of the taxable year file an informa-
tion return for each tax year providing such information
as the tax commissioner may prescribe. Corporations
failing to file information returns by the due date as
prescribed in this section shall be subject to a penalty
of fifty dollars for each failure to file, with such penalty
being collected as other penalties are collected by the
tax commissioner: Provided, That for tax years begin-
ning on or after the first day of January, one thousand
nineteen-twenty, the penalty for failure to file
an information return shall be determined under section
nineteen-a, article ten of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of January, 1992.

Governor