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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

— ● —

# ENROLLED

HOUSE BILL No. H633

(By Delegates Kiss and Burk )

— ● —

Passed March 6, 1992

In Effect Ninety Days From Passage

**ENROLLED**  
**H. B. 4633**

(By DELEGATES KISS AND BURK)

[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-

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.**

1       (a) *Additions to tax.* — Except as otherwise provided  
2 in this section, in the case of any underpayment of  
3 estimated tax, there shall be added to the tax due for  
4 the taxable year, under any article or section adminis-  
5 tered by this article, an amount determined by applying  
6 the rate established under section seventeen or seven-  
7 teen-a of this article, as appropriate for the taxable year,  
8 to the amount of the underpayment of estimated tax, for  
9 the period of the underpayment.

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

14       (1) The amount of the installment required to be paid  
15 on or before the due date for the installment, if the  
16 estimated tax due for the taxable year were an amount  
17 equal to ninety percent of the tax shown on the annual  
18 return for the taxable year divided by the number of  
19 installments taxpayer was required to make for the  
20 taxable year, or, if no return was filed, ninety percent  
21 of the tax for such year divided by the number of  
22 installment payments taxpayer was required to make  
23 for the taxable year.

24 (2) The amount, if any, of the installments paid on or  
25 before the last date prescribed for payment of that  
26 installment.

27 (c) *Period of underpayment.* — The period of under-  
28 payment of an installment shall run from the date the  
29 installment was required to be paid (due date) to  
30 whichever of the following dates is the earlier:

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

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

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

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

56 (2) *Annualized tax.* — In the case of any required  
57 installment, if the taxpayer establishes that the annu-  
58 alized income installment is less than the amount  
59 determined under subdivision (1) of this subsection and  
60 under subsection (b) of this section, then the amount of  
61 such required installment shall be the annualized  
62 income installment. For purposes of this subdivision (2),

63 there shall be four required installments for each  
 64 taxable year and the "annualized income installment" is  
 65 the difference (if any) determined by subtracting the  
 66 amount determined under paragraph (B) from the  
 67 amount determined under paragraph (A). When making  
 68 these computations, the rules in paragraph (C) shall be  
 69 followed:

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

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

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

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

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

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

86 (C) *Special rules.* — For purposes of this subdivision  
 87 (2):

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

92 (ii) *Applicable percentage.* — The applicable per-  
 93 centage shall be determined from the following table:

94 In the case of the following	The applicable
95 required installments:	percentage is:
96 1st .....	22.5
97 2nd .....	45
98 3rd .....	67.5
99 4th .....	90

100 (e) *Additional exceptions.*

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

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

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

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

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

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

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

128 (f) *Tax computed after application of credits against*  
129 *tax.* — For purposes of this section, the term "tax"  
130 means the amount of any annual tax or fee administered  
131 under this article that is generally payable in two or  
132 more installment payments during the taxable year,  
133 minus the amount of credits allowable against such tax  
134 or fee, other than taxes withheld from the taxpayer  
135 under section seventy-one or seventy-one-a, article  
136 twenty-one of this chapter (relating to taxes withheld on  
137 wages, or from distributions of pass-through income to

138 nonresident partners, S corporation shareholders or  
139 beneficiaries of an estate or trust).

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

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

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

155 (A) Wage withholding, and

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

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

174 (i) *Special rule where personal income tax return filed*  
175 *on or before January 31st.* — If on or before the last day  
176 of the first month following the end of the taxable year,

177 the taxpayer files his or her annual personal income tax  
178 return for that taxable year and pays in full the amount  
179 computed on the return as payable, then no addition to  
180 tax shall be imposed under subsection (a) with respect  
181 to any underpayment of the fourth required installment  
182 for that taxable year.

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

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

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

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

193 (4) Subsection (h) shall be applied:

194 (A) By substituting “the first day of March” for the  
195 phrase “the thirty-first day of January”, and

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

199 (k) *Fiscal years and short years.*

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

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

209 (1) *Reserved.*

210 (m) *Estates and trusts.*

211 (1) *In general.* — Except as otherwise provided in this  
212 subsection, this section shall apply to any estate or trust.

213 (2) *Exception for certain estates and certain trusts.* —  
214 With respect to any taxable year ending before the date  
215 two years after the date of the decedent's death, this  
216 section shall not apply to:

217 (A) The estate of such decedent, or

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

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

230 (n) *Regulations.*— The tax commissioner may pres-  
231 cribe such regulations as the commissioner deems  
232 necessary to carry out the purpose of this section. This  
233 includes, but is not limited to, equitable regulations  
234 allowing payment of adjusted seasonal installments in  
235 lieu of annualized income installments when the  
236 commissioner determines, based on known facts and  
237 circumstances, that payment of the annualized income  
238 installment will result in significant hardship to the  
239 taxpayer due to the seasonal nature of taxpayer's  
240 business, and equitable regulations for payment of  
241 estimated personal income tax by an individual who is:  
242 (1) An employee, (2) employed in another state for some  
243 portion or all of the taxable year, and (3) required to  
244 pay personal income taxes to such other state on (or  
245 measured by) wages earned in that state, for which  
246 credit is allowed under section twenty, article twenty-  
247 one of this chapter.

248 (o) *Effective date.* — This section as amended in the  
249 year one thousand nine hundred ninety-two, shall apply  
250 to taxable years beginning after the thirtieth day of  
251 June, one thousand nine hundred ninety-two, and this  
252 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.**

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

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

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

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

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

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

31 (2) *Failures corrected by August 1st.* — If any failure  
32 described in subsection (b) is corrected after the  
33 thirtieth day referred to in subdivision (1) but on or  
34 before the first day of August of the calendar year in

35 which the required filing date occurs, the penalty  
36 imposed by subsection (a) shall be calculated using  
37 thirty dollars in lieu of fifty dollars and the total amount  
38 imposed on the person for all such failures during the  
39 calendar year which are so corrected shall not exceed  
40 fifty thousand dollars.

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

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

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

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

72 (f) *Reasonable cause waiver.* — No penalty shall be  
73 imposed under this section with respect to any failure  
74 if it is shown that such failure is due to reasonable cause

75 and not due to willful neglect.

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

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

80 (1) *Information return.* — The term “information  
81 return” means any return required by:

82 (A) Subsection (a)(2) or (4), section fifty-one, article  
83 twenty-one of this chapter (relating to estates and  
84 trusts),

85 (B) Subsection (b), section fifty-eight, article twenty-  
86 one of this chapter (relating to partnerships),

87 (C) Subsection (c), section fifty-eight, article twenty-  
88 one of this chapter relating to certain information at  
89 source, and

90 (D) Section thirteen-b, article twenty-four of this  
91 chapter relating to S corporations.

92 (2) *Required filing date.* — The term “required filing  
93 date” means the date prescribed for filing an informa-  
94 tion return with the tax commissioner determined with  
95 regard to any extension of time for filing.

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

#### ARTICLE 21. PERSONAL INCOME TAX.

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

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

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

9 deduction for a personal exemption.

10 (2) There shall be added or subtracted, as the case  
11 may be, the share of the estate or trust in the West  
12 Virginia fiduciary adjustment determined under section  
13 nineteen.

14 (3) There shall be added to federal adjusted gross  
15 income, unless already included therein, the amount of  
16 a lump sum distribution for which the taxpayer has  
17 elected under section 402(e) of the Internal Revenue  
18 Code of one thousand nine hundred eighty-six, as  
19 amended, to be separately taxed for federal income tax  
20 purposes: *Provided*, That the provisions of this subdivi-  
21 sion shall first be effective for taxable years beginning  
22 after the thirty-first day of December, one thousand nine  
23 hundred ninety.

### PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

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

1 (a) *Computation of tax.* — For taxable years begin-  
2 ning after the thirty-first day of December, one  
3 thousand nine hundred ninety-one, the tax due under  
4 this article on taxable income derived from sources in  
5 this state by a nonresident individual, estate, or trust or  
6 by a part-year resident individual shall be calculated as  
7 provided in this section.

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

18 (2) The amount of tentative tax determined under  
19 subdivision (1) of this subsection shall then be multiplied  
20 by a fraction the numerator of which is the taxpayer's  
21 West Virginia source income, determined in accordance

22 with Part III of this article for the taxable year, and  
23 the denominator of which is such taxpayer's "federal  
24 adjusted gross income" for the taxable year as defined  
25 in section nine of this article.

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

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

31 (2) In the case of a trust, "federal adjusted gross  
32 income" shall be its "federal adjusted gross income" for  
33 the taxable year increased by the amount of any  
34 includible gain, reduced by any deductions properly  
35 allocable thereto, upon which the tax is imposed for the  
36 taxable year pursuant to section 644 of the Internal  
37 Revenue Code.

38 (c) *Special rules for part-year residents.* — For  
39 purposes of subdivision (1) of subsection (a), the "federal  
40 adjusted gross income" of a part-year resident individ-  
41 ual shall be taxpayer's federal adjusted gross income for  
42 the taxable year, as defined in section nine of this  
43 article, increased or decreased, as the case may be, by  
44 the items accrued under subdivision (1), subsection (b),  
45 section forty-five of this article, to the extent such items  
46 are not otherwise included in federal adjusted gross  
47 income for the taxable year, and decreased or increased,  
48 as the case may be by the items accrued under subdivi-  
49 sion (2), subsection (b) of said section forty-five, to the  
50 extent such items are included in federal adjusted gross  
51 income for the taxable year; and

52 (2) In computing the tax due as if taxpayer were a  
53 resident of this state for the entire tax year, West  
54 Virginia adjusted gross income shall include the  
55 accruals specified in subdivision (1) of this subsection  
56 (c), with the applicable modifications described in  
57 section forty-five of this article.

58 (d) *Definitions.*

59 (1) "Nonresident estate" means an estate of a decedent  
60 who was not a resident of this state at the time of his

61 or her death.

62 (2) "Nonresident trust" means a trust which is not a  
63 resident trust, as defined in section seven.

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

67 (e) *Effective date.* — The provisions of this section  
68 shall apply to taxable years beginning after the thirty-  
69 first day of December, one thousand nine hundred  
70 ninety-one. As to taxable years beginning prior to that  
71 date, the provisions of this article as then in effect shall  
72 apply and be controlling, and for that purpose, prior law  
73 is fully and completely preserved.

**§11-21-32. West Virginia source income of nonresident individual.**

1 (a) *General.* — The West Virginia source income of a  
2 nonresident individual shall be the sum of the net  
3 amount of income, gain, loss and deduction entering into  
4 his or her federal adjusted gross income, as defined in  
5 the laws of the United States and section nine of this  
6 article, for the taxable year, derived from or connected  
7 with West Virginia sources, including:

8 (1) His or her distributive share of partnership  
9 income, gain, loss and deduction, determined under  
10 section thirty-seven; and

11 (2) His or her pro rata share of S corporation income,  
12 loss and deduction, determined under section thirty-  
13 seven, increased by reductions for taxes described in  
14 paragraphs (2) and (3), subsection (f), section 1366 of the  
15 Internal Revenue Code; and

16 (3) His or her share of estate or trust income, gain,  
17 loss and deduction, determined under section thirty-  
18 nine.

19 (b) *Income and deductions from West Virginia sources.*

20 (1) Items of income, gain, loss and deduction derived  
21 from or connected with West Virginia sources shall be  
22 those items attributable to:

23 (A) The ownership of any interest in real or tangible  
24 personal property in this state; or

25 (B) A business, trade, profession or occupation carried  
26 on in this state; or

27 (C) In the case of a shareholder of an S corporation,  
28 the ownership of shares issued by such corporation, to  
29 the extent determined under section thirty-seven.

30 (2) Income from intangible personal property, includ-  
31 ing annuities, dividends, interest, and gains from the  
32 disposition of intangible personal property, shall  
33 constitute income derived from West Virginia sources  
34 only to the extent that such income is from property  
35 employed in a business, trade, profession or occupation  
36 carried on in this state.

37 (3) Deductions with respect to capital losses and net  
38 operating losses shall be based solely on income, gain,  
39 loss and deduction derived from or connected with West  
40 Virginia sources, under regulations of the tax commis-  
41 sioner, but otherwise shall be determined in the same  
42 manner as the corresponding federal deductions.

43 (4) The deduction allowed by section 215 of the  
44 Internal Revenue Code, relating to alimony, shall not  
45 constitute a deduction derived from West Virginia  
46 sources.

47 (c) *Income and deductions partly from West Virginia*  
48 *sources.* — If a business, trade, profession or occupation  
49 is carried on partly within and partly without this state,  
50 as determined under regulations of the tax commis-  
51 sioner, the items of income, gain, loss and deduction  
52 derived from or connected with West Virginia sources  
53 shall be determined by apportionment and allocation  
54 under such regulations.

55 (d) *Purchase and sale for own account.* — A nonres-  
56 ident, other than a dealer holding property for sale to  
57 customers in the ordinary course of his or her trade or  
58 business, shall not be deemed to carry on a business,  
59 trade, profession or occupation in this state solely by  
60 reason of the purchase and sale of property for his or  
61 her own account.

62 (e) *Husband and wife.* — If a husband and wife  
63 determine their federal income tax on a joint return but  
64 determine their West Virginia income taxes separately,  
65 they shall determine their West Virginia source incomes  
66 separately as if their federal adjusted gross incomes had  
67 been determined separately.

68 (f) *Effective date.* — This section as amended and  
69 reenacted in the year one thousand nine hundred ninety-  
70 two shall apply to taxable years beginning after the  
71 thirty-first day of December, one thousand nine hundred  
72 ninety-one. As to prior taxable years, the provisions of  
73 this section and of section thirty-one of this article, as  
74 then in effect, are fully and completely preserved.  
75

**§11-21-37. Nonresident partners and shareholders of S corporations.**

1 (a) *Portion derived from West Virginia sources.* —

2 (1) In determining the West Virginia source income  
3 of a nonresident partner of any partnership, there shall  
4 be included only the portion derived from or connected  
5 with West Virginia sources of such partner's distribu-  
6 tive share, for federal income tax purposes, of items of  
7 partnership income, gain, loss and deduction, as such  
8 portion shall be determined under regulations of the tax  
9 commissioner consistent with the applicable rules of  
10 section thirty-two.

11 (2) In determining West Virginia source income of a  
12 nonresident shareholder of an S corporation, there shall  
13 be included only the portion derived from or connected  
14 with West Virginia sources of such shareholder's pro  
15 rata share of items of S corporation income, gain, loss  
16 and deduction entering into the shareholder's federal  
17 adjusted gross income, as defined in section nine,  
18 increased by reductions for taxes described in para-  
19 graphs (2) and (3), subsection (f), section 1366 of the  
20 Internal Revenue Code, as such portion shall be  
21 determined under regulations of the tax commissioner  
22 consistent with the applicable methods and rules for  
23 allocation under article twenty-four of this chapter.

24 (b) *Special rules as to West Virginia sources.* — In  
25 determining the sources of a nonresident partner's  
26 income, no effect shall be given to a provision of the  
27 partnership agreement which:

28 (1) Characterizes payments to the partner as being for  
29 services or for the use of capital, or

30 (2) Allocates to the partner, as income or gain from  
31 sources outside West Virginia, a greater proportion of  
32 his or her distributive share of partnership income or  
33 gain than the ratio of partnership income or gain from  
34 sources outside West Virginia to partnership income or  
35 gain from all sources, except as authorized in subsection  
36 (d), or

37 (3) Allocates to the partner a greater proportion of a  
38 partnership item of loss or deduction connected with  
39 West Virginia sources than his or her proportionate  
40 share, for federal income tax purposes, of partnership  
41 loss or deduction generally, except as authorized in  
42 subsection (c).

43 (c) *Alternative methods.* — The tax commissioner may,  
44 on written application filed on or before the due date  
45 of the partner's or S corporation shareholder's return  
46 under this article for that taxable year determined  
47 without regard to any extension of time for filing,  
48 authorize the use of such other method or methods of  
49 determining the nonresident partner's portion of  
50 partnership items, or the nonresident S corporation  
51 shareholder's portion of S corporation items, derived  
52 from or connected with West Virginia sources, and the  
53 modifications related thereto, as may be appropriate  
54 and equitable, on such terms and conditions as the  
55 commissioner may require.

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

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

60 (2) The character of partnership items for a nonres-  
61 ident partner shall be determined under subsection (b)  
62 of section seventeen.

63 (3) The effect of a special provision in a partnership  
64 agreement, other than a provision referred to in  
65 subsection (b) of this section, having the principal  
66 purpose of avoidance or evasion of tax under this article  
67 shall be determined under subsection (c) of section  
68 seventeen.

69 (e) *Application of rules for resident S corporation*  
70 *shareholders to nonresident S corporation shareholders.*

71 (1) For an S corporation shareholder's distributive  
72 share of S corporation items, see subsection (a) of section  
73 seventeen-a.

74 (2) The character of S corporation items for a  
75 nonresident shareholder of an S corporation shall be  
76 determined under subsection (b) of section seventeen-a.

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

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

1 (a) *General.* — The West Virginia source income of a  
2 nonresident estate or trust shall be determined as  
3 follows:

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

9 (2) *Items not in distributable net income.* — There shall  
10 be added to or subtracted (as the case may be) the  
11 amount derived from or connected with West Virginia  
12 sources of any income, gain, loss and deduction which  
13 would be included in the determination of federal  
14 adjusted gross income if the estate or trust were an  
15 individual and which is recognized for federal income

16 tax purposes, but excluded from the definition of federal  
17 distributable net income of the estate or trust. The  
18 source of such income, gain, loss and deduction shall be  
19 determined in accordance with the applicable rules of  
20 section thirty-two as in the case of a nonresident  
21 individual.

22 (b) *Special West Virginia source rules.* — Deductions  
23 with respect to capital losses and net operating losses  
24 shall be based solely on income, gains, losses and  
25 deductions derived from or connected with West  
26 Virginia sources, under regulations of the tax commis-  
27 sioner, but otherwise determined in the same manner as  
28 the corresponding federal deductions.

29 (c) *Effective date.* — The provisions of this section as  
30 amended and reenacted in the year one thousand nine  
31 hundred ninety-two shall apply to taxable years begin-  
32 ning after the thirty-first day of December, one  
33 thousand nine hundred ninety-one. As to prior taxable  
34 years this section, as then in effect, is fully and  
35 completely preserved.

**§11-21-39. Share of nonresident estate, trust or benefi-  
ciary in income from West Virginia sources.**

1 (a) *General.* — The share of a nonresident estate or  
2 trust under paragraph (1) of subsection (a) of section  
3 thirty-eight, and the share of a nonresident beneficiary  
4 of any estate or trust under subsection (a) of section  
5 thirty-two, in estate or trust income, gain, loss and  
6 deduction from West Virginia sources shall be deter-  
7 mined as follows:

8 (1) *Items of distributable net income from West*  
9 *Virginia sources.* — There shall be determined the items  
10 of income, gain, loss and deduction, derived from or  
11 connected with West Virginia sources, which would be  
12 included in the determination of federal adjusted gross  
13 income if the estate or trust were an individual and  
14 which enter into the definition of federal distributable  
15 net income of the estate or trust for the taxable year  
16 including such items from another estate or trust of  
17 which the first estate or trust is a beneficiary. Such  
18 determination of source shall be made in accordance

19 with the applicable rules of section thirty-two as in the  
20 case of a nonresident individual.

21 (2) *Allocation among estate or trust beneficiaries.*

22 (A) The amounts determined under subdivision (1) of  
23 subsection (a) shall be allocated among the estate or  
24 trust and its beneficiaries (including, solely for the  
25 purposes of this allocation, resident beneficiaries) in  
26 proportion to their respective shares of federal distrib-  
27 utable net income.

28 (B) The amounts so allocated shall have the same  
29 character under this article as for federal income tax  
30 purposes. Where an item entering into the computation  
31 of such amounts is not characterized for federal income  
32 tax purposes, it shall have the same character as if  
33 realized directly from the source from which realized by  
34 the estate or trust, or incurred in the same manner as  
35 incurred by the estate or trust.

36 (b) *Alternative methods of determining shares.*

37 (1) If the estate or trust has no federal distributable  
38 net income for the taxable year, the share of each  
39 beneficiary (including solely for the purpose of this  
40 allocation, resident beneficiaries) in the net amount  
41 determined under subdivision (1) of subsection (a) shall  
42 be in proportion to the beneficiary's share of the estate  
43 or trust income for such year, under local law or the  
44 governing instrument, which is required to be distrib-  
45 uted currently and any such other amounts of such  
46 income distributed in such year. Any balance of such net  
47 amounts shall be allocated to the estate or trust.

48 (2) The tax commissioner may, on written application  
49 filed on or before the due date of the return due under  
50 this article for the taxable year from the estate or trust  
51 determined without regard to any extension of time for  
52 filing such return, authorize use of such other methods  
53 of determining the representative shares of the benefi-  
54 ciaries and of the estate or trust in its income derived  
55 from West Virginia sources, and the modifications  
56 related thereto, as may be appropriate and equitable, on  
57 such terms and conditions as the commissioner may

58    require.

59       (3) The tax commissioner may by regulation establish  
60    such other method or methods of determining the  
61    respective shares of the beneficiaries and of the estate  
62    or trust in its income derived from West Virginia  
63    sources as may be appropriate and equitable. Such  
64    method may be used by the fiduciary in his or her  
65    discretion whenever the allocation of such respective  
66    shares under subsection (a) or subdivision (1) of  
67    subsection (b) would result in an inequity which is  
68    substantial in amount.

69       (c) *Effective date.* — The amendments to this section  
70    enacted in the year one thousand nine hundred ninety-  
71    two shall apply to taxable years beginning after the  
72    thirty-first day of December, one thousand nine hundred  
73    ninety-one.

**§11-21-45. West Virginia source income of part-year  
resident individuals.**

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

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

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

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

15       (b) *Special accruals.*

16       (1) If an individual changes his or her status from  
17    resident to nonresident he or she shall, regardless of his  
18    or her method of accounting, accrue to the portion of the  
19    taxable year prior to such change in status any items  
20    of income, gain, loss or deduction accruing prior to the

21 change of status, if not otherwise properly entering into  
22 his or her federal adjusted gross income for such portion  
23 of the taxable year or a prior taxable year under his or  
24 her method of accounting.

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

35 (3) No item of income, gain, loss or deduction which  
36 is accrued under this subsection shall be taken into  
37 account in determining West Virginia adjusted gross  
38 income or West Virginia source income for any subse-  
39 quent period.

40 (4) The accruals under this subsection shall not be  
41 required if the individual files with the tax commis-  
42 sioner a bond or other security acceptable to the tax  
43 commissioner, conditioned upon the inclusion of  
44 amounts accruable under this subsection in West  
45 Virginia adjusted gross income or West Virginia source  
46 income for one or more subsequent taxable years as if  
47 the individual had not changed his or her resident  
48 status.

49 (c) *Effective date.* — The provisions of this section  
50 shall apply to taxable years beginning after the thirty-  
51 first day of December, one thousand nine hundred  
52 ninety-one, as amended. For taxable years that began  
53 prior to the first day of January, one thousand nine  
54 hundred ninety-two, the provisions of section fifty-four,  
55 which is repealed by this bill, apply and for that  
56 purpose, the provisions of section fifty-four are fully and  
57 completely preserved.

#### §11-21-51a. Composite returns.

1 (a) Nonresident individuals who are required by this

2 article to file a return and who are:

3 (1) Partners in a partnership deriving income from a  
4 West Virginia source or sources, or

5 (2) Shareholders of a corporation having income from  
6 a West Virginia source or sources and which made an  
7 election under section 1362(a) of the Internal Revenue  
8 Code (S corporations) for the taxable year, or

9 (3) Beneficiaries who received a distribution (actual  
10 or deemed) from an estate or trust having income from  
11 a West Virginia source or sources, may, upon payment  
12 of a composite return processing fee of fifty dollars, file  
13 a composite return in accordance with the provisions of  
14 this section.

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

22 (c) The composite return shall be filed in a manner  
23 and form acceptable to and in accordance with instruc-  
24 tions from the commissioner, and need not be signed by  
25 all nonresident individuals on whose behalf the return  
26 is filed: *Provided*, That the return is signed by a partner,  
27 in the case of a partnership, a corporate officer, in the  
28 case of a corporation, by a trustee, in the case of a trust  
29 or by an executor or administrator in the case of an  
30 estate.

31 (d) For the purposes of this section, a composite  
32 return means a return filed on a group basis as though  
33 there was one taxpayer, and sets forth the name,  
34 address, taxpayer identification number and percent  
35 ownership or interest of each nonresident individual  
36 who consents to be included in the composite return in  
37 addition to return information as that term is defined  
38 in section five-d, article ten of this chapter; the term  
39 includes block filing: *Provided*, That nothing in this  
40 section shall prohibit a nonresident from also filing a

41 separate nonresident personal income tax return for the  
42 taxable year and a separate return shall be filed if the  
43 nonresident has income from any other West Virginia  
44 source. If a separate return is also filed for the taxable  
45 year, the nonresident shall be allowed credit for his or  
46 her share of the tax remitted with the composite return  
47 for that taxable year.

48 (e) This section, as amended in the year one thousand  
49 nine hundred ninety-two, shall apply to composite  
50 returns filed after the thirty-first day of December, one  
51 thousand nine hundred ninety-two.

**§11-21-71a. Withholding tax on West Virginia source  
income of nonresident partners, nonresi-  
dent S corporation shareholders, and  
nonresident beneficiaries of estates and  
trusts.**

1 (a) *General rule.* — For the privilege of doing business  
2 in this state or deriving rents or royalties from real or  
3 tangible personal property located in this state, includ-  
4 ing , but not limited to, natural resources in place and  
5 standing timber, a partnership, S corporation, estate, or  
6 trust, which is treated as a pass-through entity for  
7 federal income tax purposes and which has taxable  
8 income for the taxable year derived from or connected  
9 with West Virginia sources any portion of which is  
10 allocable to a nonresident partner, nonresident share-  
11 holder, or nonresident beneficiary, as the case may be,  
12 shall pay a withholding tax under this section, except  
13 as provided in subsections (c) and (k) of this section.

14 (b) *Amount of withholding tax.*

15 (1) *In general.* — The amount of withholding tax  
16 payable by any partnership, S corporation, estate, or  
17 trust, under subsection (a) shall be equal to four percent  
18 of the effectively connected taxable income of the  
19 partnership, S corporation, estate, or trust, as the case  
20 may be, which may lawfully be taxed by this state and  
21 which is allocable to a nonresident partner, nonresident  
22 shareholder, or nonresident beneficiary of a trust or  
23 estate.

24       (2) *Credits against tax.* — When determining the  
25 amount of withholding tax due under this section, the  
26 pass-through entity may apply any tax credits allowable  
27 under this chapter to the pass-through entity which pass  
28 through to the nonresident distributees: *Provided*, That  
29 in no event may the application of any credit or credits  
30 reduce the tax liability of the distributee under this  
31 article to less than zero.

32       (c) *When withholding is not required.* — Withholding  
33 shall not be required:

34       (1) On distribution to a person, other than a corpora-  
35 tion, who is exempt from the tax imposed by this article.  
36 For purposes of this subdivision (1), a person is exempt  
37 from the tax imposed by this article only if such person  
38 is, by reason of such person's purpose or activities,  
39 exempt from paying federal income taxes on such  
40 person's West Virginia source income. The pass-  
41 through entity may rely on the written statement of the  
42 person claiming to be exempt from the tax imposed by  
43 this article provided the pass-through entity discloses  
44 the name and federal taxpayer identification number  
45 for all such persons in its return for the taxable year  
46 filed under this article or article twenty-four of this  
47 chapter; or

48       (2) On distributions to a corporation which is exempt  
49 from the tax imposed by article twenty-four of this  
50 chapter. For purposes of this subdivision (2), a corpora-  
51 tion is exempt from the tax imposed by article twenty-  
52 four of this chapter only if the corporation, by reason  
53 of its purpose or activities is exempt from paying federal  
54 income taxes on the corporation's West Virginia source  
55 income. The pass-through entity may rely on the written  
56 statement of the person claiming to be exempt from the  
57 tax imposed by article twenty-four of this chapter  
58 provided the pass-through entity discloses the name and  
59 federal taxpayer identification number for all such  
60 corporations in its return for the taxable year filed  
61 under this article or article twenty-four of this chapter;  
62 or

63       (3) On distributions when compliance will cause

64 undue hardship on the pass-through entity: *Provided,*  
65 That no pass-through entity shall be exempt under  
66 subdivision (3) from complying with the withholding  
67 requirements of this section unless the tax commis-  
68 sioner, in his or her discretion, approves in writing the  
69 pass-through entity's written petition for exemption  
70 from the withholding requirements of this section based  
71 on undue hardship. The tax commissioner may pre-  
72 scribe the form and contents of such a petition and  
73 specify standards for when a pass-through entity will  
74 not be required to comply with the withholding require-  
75 ments of this section due to undue hardship. Such  
76 standards shall take into account (among other relevant  
77 factors) the ability of a pass-through entity to comply at  
78 reasonable cost with the withholding requirements of  
79 this section and the cost to this state of collecting the  
80 tax directly from a nonresident distributee who does not  
81 voluntarily file a return and pay the amount of tax due  
82 under this article with respect to such distributions; or

83 (4) On distributions by nonpartnerships ventures. An  
84 unincorporated organization that has elected, under  
85 section 761 of the Internal Revenue Code, to not be  
86 treated as a partnership for federal income tax, is not  
87 treated as a partnership under this article and is not  
88 required to withhold under this section. However, such  
89 unincorporated organizations shall make and file with  
90 the tax commissioner a true and accurate return of  
91 information under subsection (c), section fifty-eight of  
92 this article, under such regulations and in such form  
93 and manner as the tax commissioner may prescribe,  
94 setting forth (A) the amount of fixed or determinable  
95 gains, profits, and income; (B) the name, address and  
96 taxpayer identification number of persons receiving  
97 fixed or determinable gains, profits or income from the  
98 nonpartnership venture.

99 (d) *Payment of withheld tax.*

100 (1) *General rule.* — Each partnership, S corporation,  
101 estate, or trust, required to withhold tax under this  
102 section shall pay the amount required to be withheld to  
103 the tax commissioner no later than:

104 (A) *S corporations*. — The fifteenth day of the third  
105 month following the close of the taxable year of the S  
106 corporation along with the annual information return  
107 due under article twenty-four of this chapter, unless  
108 paragraph (C) applies.

109 (B) *Partnerships, estates and trusts*. — The fifteenth  
110 day of the fourth month following the close of the  
111 taxable year of the partnership, estate, or trust, with the  
112 annual return of the partnership, estate, or trust due  
113 under this article, unless paragraph (C) applies.

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

117 (2) *Special rules*.

118 (A) *Where there is extension of time to file return*. —  
119 An extension of time for filing the returns referenced  
120 in subdivision (1) does not extend the time for paying  
121 the amount withholding tax due under this section. In  
122 this situation, the pass-through entity shall pay, by the  
123 date specified in subdivision (1), at least ninety percent  
124 of the withholding tax due for the taxable year, or one  
125 hundred percent of the tax paid under this section for  
126 the prior taxable year, if such taxable year was a  
127 taxable year of twelve months and tax was paid under  
128 this section for that taxable year. The remaining portion  
129 of the tax due under this section, if any, shall be paid  
130 at the time the pass-through entity files the return  
131 specified in subdivision (1). If the balance due is paid  
132 by the last day of the extension period for filing such  
133 return and the amount of tax due with such return is  
134 ten percent or less of the tax due under this section for  
135 the taxable year, no additions to tax shall be imposed  
136 under article ten of this chapter with respect to balance  
137 so remitted. If the amount of withholding tax due under  
138 this section for the taxable year is less than the  
139 estimated withholding taxes paid for the taxable year  
140 by the pass-through entity, the excess shall be refunded  
141 to the pass-through entity or, at its election, established  
142 as a credit against withholding tax due under this  
143 section for the then current taxable year.

144 (B) *Deposit in trust for tax commissioner.* — The tax  
145 commissioner may, if the commissioner believes such  
146 action is necessary for the protection of trust fund  
147 moneys due this state, require any pass-through entity  
148 to pay over to the tax commissioner the tax deducted  
149 and withheld under this section, at any earlier time or  
150 times.

151 (e) *Effectively connected taxable income.* — For pur-  
152 poses of this section, the term “effectively connected  
153 taxable income” means the taxable income or portion  
154 thereof of a partnership, S corporation, estate, or trust,  
155 as the case may be, which is derived from or attribu-  
156 table to West Virginia sources as determined under  
157 section thirty-two of this article and such regulations as  
158 the tax commissioner may prescribe, whether such  
159 amount is actually distributed or is deemed to have been  
160 distributed for federal income tax purposes.

161 (f) *Treatment of nonresident partners, S corporation*  
162 *shareholders or beneficiaries of a trust or estate.*

163 (1) *Allowance of credit.* — Each nonresident partner,  
164 nonresident shareholder, or nonresident beneficiary,  
165 shall be allowed a credit for such partner’s or share-  
166 holder’s or beneficiary’s share of the tax withheld by the  
167 partnership, S corporation, estate, or trust, under this  
168 section: *Provided*, That when the distribution is to a  
169 corporation taxable under article twenty-four of this  
170 chapter, the credit allowed by this section shall be  
171 applied against the distributee corporation’s liability for  
172 tax under article twenty-four of this chapter.

173 (2) *Credit treated as distributed to partner, share-*  
174 *holder or beneficiary.* — Except as provided in regula-  
175 tions, a nonresident partner’s share, a nonresident  
176 shareholder’s share, or a nonresident beneficiary’s share,  
177 of any withholding tax paid by the partnership, S  
178 corporation, estate, or trust, under this section shall be  
179 treated as distributed to such partner by such partner-  
180 ship, or to such shareholder by such S corporation, or  
181 to such beneficiary by such estate or trust, on the earlier  
182 of:

183 (A) The day on which such tax was paid to the tax

184 commissioner by the partnership, S corporation, estate,  
185 or trust; or

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

189 (g) *Regulations.* — The tax commissioner shall pres-  
190 cribe such regulations as may be necessary to carry out  
191 the purposes of this section.

192 (h) *Information statement.*

193 (1) Every person required to deduct and withhold tax  
194 under this section shall furnish to each nonresident  
195 partner, or nonresident shareholder, or nonresident  
196 beneficiary, as the case may be, a written statement, as  
197 prescribed by the tax commissioner, showing the  
198 amount of West Virginia effectively connected taxable  
199 income, whether distributed or not distributed for  
200 federal income tax purposes by such partnership, S  
201 corporation, estate, or trust, to such nonresident partner,  
202 or nonresident shareholder, or nonresident beneficiary,  
203 the amount deducted and withheld as tax under this  
204 section; and such other information as the tax commis-  
205 sioner may require.

206 (2) A copy of the information statements required by  
207 this subsection must be filed with the West Virginia  
208 return filed under this article (or article twenty-four of  
209 this chapter in the case of S corporations) by the pass-  
210 through entity for its taxable year to which the  
211 distribution relates. This information statement must be  
212 furnished to each nonresident distributee on or before  
213 the due date of the pass-through entity's return under  
214 this article or article twenty-four of this chapter for the  
215 taxable year, including extensions of time for filing such  
216 return, or such later date as may be allowed by the tax  
217 commissioner.

218 (i) *Liability for withheld tax.* — Every person re-  
219 quired to deduct and withhold tax under this section is  
220 hereby made liable for the payment of the tax due under  
221 this section for taxable years (of such persons) beginning  
222 after the thirty-first day of December, one thousand nine

223 hundred ninety-one, except as otherwise provided in this  
224 section. The amount of tax required to be withheld and  
225 paid over to the tax commissioner shall be considered  
226 the tax of the partnership, estate, or trust, as the case  
227 may be, for purposes of articles nine and ten of this  
228 chapter. Any amount of tax withheld under this section  
229 shall be held in trust for the tax commissioner. No  
230 partner, S corporation shareholder, or beneficiary of a  
231 trust or estate, shall have a right of action against the  
232 partnership, S corporation, estate, or trust, in respect to  
233 any moneys withheld from such person's distributive  
234 share and paid over to the tax commissioner in com-  
235 pliance with or in intended compliance with this section.

236 (j) *Failure to withhold.* — If any partnership, S  
237 corporation, estate, or trust, fails to deduct and withhold  
238 tax as required by this section, and thereafter the tax  
239 against which such tax may be credited is paid, the tax  
240 so required to be deducted and withheld under this  
241 section shall not be collected from the partnership, S  
242 corporation, estate, or trust, as the case may be, but the  
243 partnership, S corporation, estate, or trust, shall not be  
244 relieved from liability for any penalties, interest, on  
245 additions to tax otherwise applicable in respect of such  
246 failure to withhold.

247 (k) *Distributee agreements.*

248 (1) The tax commissioner shall permit a nonresident  
249 distributee to file with a pass-through entity, on a form  
250 prescribed by the tax commissioner, the agreement of  
251 such nonresident distributee: (A) To timely file returns  
252 and make timely payment of all taxes imposed by this  
253 article or article twenty-four of this chapter in the case  
254 of a C corporation, on the distributee with respect to the  
255 effectively connected taxable income of the pass-through  
256 entity; and (B) to be subject to personal jurisdiction in  
257 this state for purposes of the collection of any unpaid  
258 income tax under this article (or article twenty-four of  
259 this chapter in the case of a C corporation), together  
260 with related interest, penalties, additional amounts and  
261 additions to tax, owed by the nonresident distributee.

262 (2) A nonresident distributee electing to execute an

263 agreement under this subsection must file a complete  
264 and properly executed agreement with each pass-  
265 through entity for which this election is made, on or  
266 before the last day of the first taxable year of the pass-  
267 through entity in respect of which the agreement  
268 applies. The pass-through entity shall file a copy of that  
269 agreement with the tax commissioner as provided in  
270 subdivision (5).

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

275 (4) Upon receipt of such an agreement properly  
276 executed by the nonresident distributee, the pass-  
277 through entity shall not withhold tax under this section  
278 for the taxable year of the pass-through entity in which  
279 the agreement is received by the pass-through entity  
280 and for any taxable year subsequent thereto until either  
281 the nonresident distributee notifies the pass-through  
282 entity, in writing, to begin withholding tax under this  
283 section or the tax commissioner directs the pass-through  
284 entity, in writing, to begin withholding tax under this  
285 section because of the distributee's continuing failure to  
286 comply with the terms of such agreement.

287 (5) The pass-through entity shall file with the tax  
288 commissioner a copy of all distributee agreements  
289 received by the pass-through entity during any taxable  
290 year with this annual information return filed under  
291 this article, or article twenty- four of this chapter in the  
292 case of S corporations. If the pass-through entity fails  
293 to timely file with the tax commissioner a copy of an  
294 agreement executed by a distributee and furnished to  
295 the pass-through entity in accordance with this section,  
296 then the pass-through entity shall remit to the tax  
297 commissioner an amount equal to the amount that  
298 should have been withheld under this section from the  
299 nonresident distributee. The pass-through entity may  
300 recover payment made pursuant to the preceding  
301 sentence from the distributee on whose behalf the  
302 payment was made.

303 (l) *Definitions.* — For purposes of this section, the  
304 following terms mean:

305 (1) *Corporation.* — The term “corporation” includes  
306 associations, joint stock companies and other entities  
307 which are taxed as corporations for federal income tax  
308 purposes.

309 (A) *C Corporation.* — The term “C corporation” means  
310 a corporation which is not an S corporation for federal  
311 income tax purposes.

312 (B) *S Corporation.* — The term “S corporation” means  
313 a corporation for which a valid election under section  
314 1362(a) of the Internal Revenue Code is in effect for the  
315 taxable period. All other corporations are C  
316 corporations.

317 (2) *Distributee.* — The term “distributee” includes any  
318 partner of a partnership, any shareholder of an S  
319 corporation, and any beneficiary of an estate or trust,  
320 that is treated as a pass-through entity for federal  
321 income tax purposes for the taxable year of the entity,  
322 with respect to all or a portion of its income.

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

327 (4) *Nonresident distributee.* — The term “nonresident  
328 distributee” includes any individual who is treated as a  
329 nonresident of this state under this article; and any  
330 partnership, estate, trust or corporation, whose commer-  
331 cial domicile is located outside this state.

332 (5) *Partner.* — The term “partner” includes a member  
333 of a partnership as that term is defined in this section.

334 (6) *Partnership.* — The term “partnership” includes a  
335 syndicate, group, pool, joint venture, or other unincor-  
336 porated organization through or by means of which any  
337 business, financial operation, or venture is carried on,  
338 and which is not a trust or estate, a corporation or a sole  
339 proprietorship. “Partnership” does not include an  
340 unincorporated organization which, under section 761 of

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

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

348 (8) *Taxable year of the pass-through entity.* — The  
349 term “taxable year of the pass-through entity” means  
350 the taxable year of the pass-through entity for federal  
351 income tax purposes. If a pass-through entity does not  
352 have a taxable year for federal tax purposes, its tax year  
353 for purposes of this article shall be the calendar year.

354 (m) *Effective date.* — The provisions of this section  
355 shall first apply to taxable years of pass-through entities  
356 beginning after the thirty-first day of December, one  
357 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.

1 Every corporation electing to be taxed under subchap-  
2 ter S of the Internal Revenue Code of 1986, as amended,  
3 shall on or before the fifteenth day of the third month  
4 following the close of the taxable year file an informa-  
5 tion return for each tax year providing such information  
6 as the tax commissioner may prescribe. Corporations  
7 failing to file information returns by the due date as  
8 prescribed in this section shall be subject to a penalty  
9 of fifty dollars for each failure to file, with such penalty  
10 being collected as other penalties are collected by the  
11 tax commissioner: *Provided*, That for tax years begin-  
12 ning on or after the first day of January, one thousand  
13 nine hundred ninety-two, the penalty for failure to file  
14 an information return shall be determined under section  
15 nineteen-a, article ten of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Donner Leck*

Chairman Senate Committee

*Ernest C. Moore*

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Paul K. Brown*

Clerk of the Senate

*Donald L. Kopp*

Clerk of the House of Delegates

*Witt Burdette*

President of the Senate

*Robert C. Bell*

Speaker of the House of Delegates

The within *is approved* this the *27<sup>th</sup>*  
day of *March*, 1992.

*Gaston Caperton*

Governor

PRESENTED TO THE

GOVERNOR

Date 3/9/92

Time 2:47 pm