

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

House Bill 4705

(BY DELEGATES ANDERSON, BOGGS, FRICH, WESTFALL,
SMITH, CANTERBURY, HAMILTON, MILLER AND E. NELSON)

[BY REQUEST OF THE WEST VIRGINIA STATE TAX DIVISION]

[Passed March 8, 2016; in effect from passage.]

1 AN ACT to amend and reenact §11-21-32 and §11-21-77 of the Code of West Virginia, 1931, as
2 amended, relating to adding an additional type of West Virginia source income of
3 nonresident individual; and exclusion of lottery winnings as compensation for personal
4 services.

Be it enacted by the Legislature of West Virginia:

1 That §11-21-32 and §11-21-77 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted, to read as follows:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

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

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

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

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

10 (3) His or her share of estate or trust income, gain, loss and deduction, determined under
11 section thirty-nine of this article.

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

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

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

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

17 (C) In the case of a shareholder of an S corporation, the ownership of shares issued by
18 such corporation, to the extent determined under section thirty-seven; or

19 (D) Prizes awarded under article twenty-two, chapter twenty-nine of this code by the West
20 Virginia State Lottery Commission.

21 (2) Income from intangible personal property, including annuities, dividends, interest, and
22 gains from the disposition of intangible personal property, shall constitute income derived from
23 West Virginia sources only to the extent that such income is from property employed in a business,
24 trade, profession or occupation carried on in this state.

25 (3) Deductions with respect to capital losses and net operating losses shall be based solely
26 on income, gain, loss and deduction derived from or connected with West Virginia sources, under
27 regulations of the Tax Commissioner, but otherwise shall be determined in the same manner as
28 the corresponding federal deductions.

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

31 (c) *Income and deductions partly from West Virginia sources.* — If a business, trade,
32 profession or occupation is carried on partly within and partly without this state, as determined
33 under regulations of the Tax Commissioner, the items of income, gain, loss and deduction derived
34 from or connected with West Virginia sources shall be determined by apportionment and
35 allocation under such regulations.

36 (d) *Purchase and sale for own account.* — A nonresident, other than a dealer holding
37 property for sale to customers in the ordinary course of his or her trade or business, shall not be
38 deemed to carry on a business, trade, profession or occupation in this state solely by reason of
39 the purchase and sale of property for his or her own account.

40 (e) *Husband and wife.* — If a husband and wife determine their federal income tax on a
41 joint return but determine their West Virginia income taxes separately, they shall determine their

42 West Virginia source incomes separately as if their federal adjusted gross incomes had been
43 determined separately.

44 (f) *Effective date.* — This section as amended and reenacted in the year 1992 shall apply
45 to taxable years beginning after December 31, 1991. As to prior taxable years, the provisions of
46 this section and of section thirty-one of this article, as then in effect, are fully and completely
47 preserved.

1 **§11-21-77. Extension of withholding to certain lottery winnings.**

2 (a) *Lottery winnings subject to withholding.* — Proceeds of more than \$5,000 from any
3 lottery prize awarded by the West Virginia State Lottery Commission is subject to withholding.
4 The commission in making any payment of a lottery prize subject to withholding shall deduct and
5 withhold from the payment a tax in an amount equal to six and one-half percent of the payment.

6 (b) *Statement by recipient.* — Every person who is to receive payment of winnings which
7 are subject to withholding shall furnish the person making the payment a statement made under
8 the penalties of perjury, containing the name, address and taxpayer identification number of the
9 person receiving the payment and each person entitled to any portion of the payment.

10 (c) *Coordination with other sections.* — For the purposes of determining liability for
11 payment of taxes and filing of returns, payments of winnings which are subject to withholding shall
12 be treated as if they were wages paid by an employer to an employee, but shall not be treated as
13 compensation for personal services performed within this State for purposes of sections forty and
14 forty-one of this article.

15 (d) *Backup withholding.* — Beginning July 1, 2012, every person who is required to file
16 Internal Revenue Service form W-2G, and who is subject to backup withholding under federal
17 law, is subject to West Virginia backup withholding. The payor in making any payment of a
18 gambling prize subject to backup withholding shall deduct and withhold from the payment a tax in
19 an amount equal to six and one-half percent of the payment.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2016.

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Governor