

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Originating**

### **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]

[Originating in the Committee on Finance;

reported on February 22, 2016]



1 A BILL 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 or her distributive share of partnership income, gain, loss and deduction,  
 6 determined under section thirty-seven; and

7 (2) His or her or her pro rata share of S corporation income, loss and deduction,  
 8 determined under section thirty-seven of this article, increased by reductions for taxes described  
 9 in 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.

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

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

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

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

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

NOTE: The purpose of this bill is to clarify that traditional lottery prizes from a lottery game conducted by the West Virginia Lottery Commission are West Virginia source income for a nonresident individual for personal income tax purposes, and to clarify that traditional lottery prizes will not be considered as wages for purposes of the reciprocal tax treatment of wages and compensation with other states.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.