

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2623

FISCAL
NOTE

By Delegate Young

[Introduced January 17, 2023; Referred to the Committee
on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §11-21-71c, relating to tax on income of nonresidents for natural resources
 3 royalty payments received from lessees; providing legislative findings; defining terms;
 4 providing for withholding of estimated tax liabilities from natural resources royalty
 5 payments for nonresidents by lessees; providing exceptions to the tax withholding
 6 requirements under certain circumstances; providing that withheld amounts be paid by
 7 lessees to the Tax Commissioner on behalf of the nonresidents; providing for refunds to
 8 nonresidents for overpayment; requiring annual withholding statements, reconciliation,
 9 and filing requirements; requiring electronic filing under specified circumstances; providing
 10 for criminal and civil penalties in certain circumstances for non-compliance; providing for
 11 rule-making; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-71c. Withholding tax on income from natural resources royalty payments for nonresidents.

1 (a) Legislative findings. -- Because of the lack of an effective mechanism to collect state
 2 taxes owed for income earned in the state from out-of-state lessors of in-state mineral interests
 3 has resulted in significant loss of tax revenue to West Virginia, the Legislature finds that a creation
 4 of an alternative collection methodology for assuring payments of taxes due the state from out-of-
 5 state lessors is necessary to assure equitable, fair and uniform collection of royalty payments for
 6 in-state properties from all lessors of these interests.

7 (b) Withholding tax on income from nonresident natural resources royalty payments. --
 8 (1) Every lessee of West Virginia real estate who makes a natural resources royalty
 9 payment in the course of a trade or business to a lessor who does not reside in the State of West
 10 Virginia shall withhold West Virginia personal income tax on natural resources royalty payments to
 11 that lessor.

12 (2) Every lessee required to withhold West Virginia personal income tax on natural
13 resources royalty payments to a nonresident lessor under this section shall deduct and withhold
14 from such payments a tax computed in such manner as to result, so far as practicable, in
15 withholding from the lessor's payments during each calendar year an amount substantially
16 equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion
17 in the lessor's West Virginia adjusted gross income received from the payments during such
18 calendar year. The method of determining the amount to be withheld shall be prescribed by the
19 Tax Commissioner.

20 (3) The withholding of tax under this section is optional with respect to payments to a lessor
21 who receives less than \$1,000 annually in natural resources royalty payments from the lessee and
22 is at the discretion of the lessee.

23 (c) Amounts collected under subsection (b) of this section and paid over to the Tax
24 Commissioner shall be deemed to have been paid to the Tax Commissioner on behalf of the lessor
25 from whom the amounts were withheld. The lessor will be credited with having paid the amounts
26 for the taxable years in which natural resources royalty payment that is the subject of the tax
27 occurred against any tax owed by the lessor to the State of West Virginia on income resulting from
28 the natural resources royalty payment and is entitled to a refund from the Tax Commissioner of any
29 amount in excess of the amount owed.

30 (d) For the purposes of this section, the term or phrase:

31 (1) "Lessor" includes individuals, estates or trusts, or any other type of business entity that
32 leases a property interest that permits a natural resource to be extracted.

33 (2) "Natural resource" means all forms of minerals including, but not limited to, rock, stone,
34 limestone, coal, shale, gravel, sand, clay, petroleum, natural gas, oil, natural gas liquids, metal
35 ores and rare earth metals that are contained in, under or on the soils or waters of this state, and
36 timber and forest products and any other natural resource the production of which is taxable under
37 §11-13A-1 et seq. of this code.

38 (3) "Natural resources royalty payment" means a payment reserved by the grantor of a
39 natural resource interest, or similar right, and payable proportionately to the use made of the right
40 by the grantee. Royalty interests in natural resource properties are generally created by
41 assignment of an economic interest via a leasing arrangement between the lessor of the natural
42 resource rights and a lessee. Natural resources royalty payments include, but are not limited to,
43 rents, delay rentals, royalty interests, working interests, lease bonus payments and overriding
44 royalty interests.

45 (e) Annual withholding statements. --

46 (1) Every lessee required to withhold West Virginia personal income tax on natural
47 resources royalty payments to a nonresident lessor under this section shall furnish to each lessor
48 an annual statement at such time in such manner as may be prescribed by the Tax Commissioner
49 showing the total payments made by the lessee to the lessor during the taxable year and showing
50 the amount of the tax deducted and withheld from the payments under this section.

51 (2) Every lessee required to withhold tax under this section shall file a withholding return as
52 prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to
53 be deducted and withheld. The due dates for returns and payments may, at the discretion of the
54 Tax Commissioner, be established by the commissioner to match as closely as practicable the due
55 dates in effect for employer's withholding under §11-21-74 of this code: *Provided*, That not later
56 than January 31, 2025, and January 31 of each year thereafter, lessees shall submit to the Tax
57 Commissioner the annual reconciliation of West Virginia income tax withheld, together with state
58 copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not
59 limited to, 1099s, furnished to each lessor for income from natural resources royalty payments
60 from the preceding calendar year, notwithstanding the fact that the lessee may have a calendar tax
61 year ending on December 31 or a fiscal tax year ending on a date other than December 31:
62 *Provided, however*, That the Tax Commissioner may by rule prescribe one or more different due
63 dates for the annual reconciliation, and withholding statements, based upon reporting and

64 accounting practices of natural resources producers or particular segments of the natural
65 resourced production industry, as may be appropriate. Notwithstanding the provisions of this
66 section, where the average quarterly amount deducted and withheld by any lessee is less than
67 \$150 and the aggregate for the calendar year can reasonably be expected to be less than \$600,
68 the Tax Commissioner may by rule permit a lessee to file an annual return and pay over to the
69 commissioner the taxes deducted and withheld on a due date prescribed by the commissioner.

70 (A) Whenever any lessee fails to collect, truthfully account for, or pay over the tax, or to
71 make returns of the tax as required in this section, the Tax Commissioner may serve a notice
72 requiring the lessee to collect the taxes which become collectible after service of the notice, to
73 deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for
74 and payable to the commissioner and to keep the amount of the tax in the separate account until
75 payment over to the commissioner. The notice remains in effect until a notice of cancellation is
76 served by the Tax Commissioner. Failure of a lessee or other person responsible for compliance
77 with any order issued by the Tax Commissioner under this section is subject to the civil and
78 criminal penalties and liabilities prescribed by this chapter for failure to withhold tax or failure to
79 remit withheld tax, or both.

80 (B) An annual reconciliation of West Virginia personal income tax withheld shall be
81 submitted by the lessee by the due date thereof established under this section, following the close
82 of the calendar year, together with State Tax Division copies of all withholding tax statements for
83 that calendar year. The reconciliation shall be accompanied by a list of the amounts of income
84 withheld for each lessor in such form as the Tax Commissioner prescribes and shall be filed
85 separately from the lessor's monthly or quarterly return.

86 (C) Any lessee required to file a withholding return for 25 or more lessors shall file its return
87 using electronic filing as defined in §11-21-54 of this code. A lessee that is required to file
88 electronically but does not do so is subject to a penalty in the amount of \$25 per lessor for whom
89 the return was not filed electronically, unless the lessee shows that the failure is due to a technical

90 inability to comply.

91 (f) *Rule-making.* -- The Tax Commissioner may propose legislative, procedural,
92 interpretive or emergency rules or any combination thereof, for promulgation in accordance with
93 §29A-3-1 et seq. of this code to implement this section.

94 (g) *Effective date.* -- The provisions of this section apply to all taxable years beginning after
95 December 31, 2023.

NOTE: The purpose of this bill is to require lessees of West Virginia real estate who make natural resources royalty payments for in-state property to any nonresident lessor, to withhold West Virginia personal income tax on natural resources royalty payments. The bill provides exceptions, penalties, defines terms and grants rule-making authority.

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