

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 518

**FISCAL
NOTE**

By Senator Weld

[Introduced February 18, 2025; referred
to the Committee on Finance]

A BILL to amend and reenact §11-21-3, §11-21-4g, §11-21-18, §11-21-30, §11-21-40, §11-21-51, §11-21-71a, and §44D-1-108, of the Code of West Virginia, 1931, as amended, relating to the personal income tax; and exempting non-grantor trusts administered in this state from the personal income tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.
§11-21-3. Imposition of tax; persons subject to tax.

(a) Imposition of tax. — A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate, electing pass-through entity, and trust, except as otherwise provided in this section: *Provided*, That, for tax years beginning on or after January 1, 2024, the income of a non-grantor trust administered by a licensed private trust company created pursuant to the provisions of §311-1-1 *et seq.* of this code shall have no tax imposed upon it by this section.

(b) Partners and partnerships. — A partnership or other pass-through entity as such shall not be subject to tax under this article, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. Persons carrying on business as partners or owners of a pass-through entity shall be liable for tax under this article only in their separate or individual capacities, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. However, partnerships and other pass-through entities are subject to the tax imposed by this article to the extent they elect to pay additional West Virginia income taxes owed that are attributable to final federal partnership audit adjustments under §11-21A-3 of this code.

(c) Associations taxable as corporations. — An association, trust, or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) Exempt trusts and organizations. — A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) Non-grantor trusts. -- A non-grantor trust, meaning a trust other than a grantor trust as described in § 671 of the Internal Revenue Code of 1986, as from time to time amended, that is created under the laws of the state of West Virginia or has its situs in West Virginia and is administered by any West Virginia resident individual trustee or a corporate trustee, whether a state chartered banking institution, a federally chartered banking institution, or a private trust company as defined in § 311-1-3(16), with a principal place of business and a physical presence on a regular basis in this state, shall be exempt from tax under this article.

~~(e)~~ (f) Cross references. — For definitions of West Virginia taxable income of:

(1) Resident individual, see §11-21-11 of this code.

(2) Resident estate or trust, see §11-21-18 of this code.

(3) Nonresident individual, see §11-21-30 of this code.

(4) Nonresident estate or trust, see §11-21-38 of this code.

~~(f)~~ (g) Effective date. — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022: Provided, That the provisions of this section, as amended during the 2025 regular legislative session, shall apply to taxable years beginning on and after January 1, 2026.

§11-21-4g Rate of tax — Taxable years beginning on and after January 1, 2023.

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts. — The tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file

a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and non-grantor trusts as defined by §11-21-3(e) of this code) shall be determined in accordance with the following table:

If the West Virginia taxable

income is:

The tax is:

Not over \$10,000

2.36% of the taxable income

Over \$10,000 but not over \$25,000

\$236 plus 3.15% of excess over \$10,000

Over \$25,000 but not over \$40,000

\$708.50 plus 3.54% of excess over \$25,000

Over \$40,000 but not over \$60,000

\$1,239.50 plus 4.72% of excess over

\$40,000

Over \$60,000

\$2,183.50 plus 5.12% of excess over

\$60,000

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable

income is:

The tax is:

Not over \$5,000

2.36% of the taxable income

Over \$5,000 but not over \$12,500

\$118 plus 3.15% of excess over \$5,000

Over \$12,500 but not over \$20,000

\$354.25 plus 3.54% of excess over \$12,500

Over \$20,000 but not over \$30,000

\$619.75 plus 4.72% of excess over \$20,000

Over \$30,000

\$1,091.75 plus 5.12% of excess over

\$30,000

(c) Rate of tax on non-grantor trusts administered by licensed private trust companies. — In the case of non-grantor trusts administered by licensed private trust companies created pursuant to §311-1-1 *et seq.* and §11-21-3(e) of this code, there is no tax imposed by §11-21-3 of this code.

~~(e)~~ (d) Effect of rates on Nonresident Composite and Withholding Obligations — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the retroactive date specific in §11-21-4g(d) of this code subsection (e) of this section, whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77, of this article, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* and §11-21-3(e) of this code), the stated percentage shall be changed to 5.12%.

~~(d)~~ (e) Applicability of this section. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply retroactively for all taxable years beginning on and after January 1, 2023, and shall be in lieu of the rates of tax specified in §11-21-4e of this code.

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

The West Virginia taxable income of a resident estate or trust (except non-grantor trusts as defined by §11-21-3(e) of this code and those administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code) means its federal taxable income for the taxable year as defined in the laws of the United States and section nine of this article §11-21-9 of this code for the taxable year, with the following modifications:

(1) There shall be subtracted \$600 as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be added or subtracted, as the case may be, the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen of this article §11-21-

19 of this code.

(3) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes: *Provided*, That the provisions of this subdivision shall first be effective for taxable years beginning after December 31, 1990.

(4) There shall be added by an electing small business trust as defined in Section 1361(e) of the Internal Revenue Code of 1986, as amended, which is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641 of the Internal Revenue Code of 1986, as amended.

(b) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

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

(a) Computation of tax. — For taxable years beginning after December 31, 1991, the tax due under this article on taxable income derived from sources in this state by a nonresident individual, estate, or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code) or by a part-year resident individual shall be calculated as provided in this section.

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

allowed under section twenty of this article §11-21-20 of this code.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer's "federal adjusted gross income" for the taxable year as defined in section nine of this article §11-21-9 of this code: *Provided*, That if this computation produces a result that is out of all appropriate proportion to the amount of taxpayer's West Virginia source income, the Tax Commissioner may provide such equitable relief as the Tax Commissioner, in his or her discretion, considers to be appropriate under the circumstances.

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

(1) The "federal adjusted gross income" of an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code) shall be determined as if such estate or trust were an individual; and

(2) In the case of a trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code), "federal adjusted gross income" shall be its "federal adjusted gross income" for the taxable year increased by the amount of any includable gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to Section 644 of the Internal Revenue Code.

(3) When an electing small business trust as defined in Section 1361(e)(1) of the Internal Revenue Code of 1986, as amended, is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641(c) of that code the Internal Revenue Code of 1986 shall be included in West Virginia taxable

income of the trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code).

(c) Special rules for part-year residents. —

(1) For purposes of subdivision (1), subsection (a) of this section, the "federal adjusted gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income for the taxable year, as defined in section nine of this article §11-21-9 of this code, increased or decreased, as the case may be, by the items accrued under subdivision (1), subsection (b), section forty-four of this article §11-21-44(b)(1) of this code, to the extent such items are not otherwise included in federal adjusted gross income for the taxable year, and decreased or increased, as the case may be by the items accrued under subdivision (2) of said subsection §11-21-44(b)(2) of this code, to the extent such items are included in federal adjusted gross income for the taxable year; and

(2) In computing the tax due as if taxpayer were a resident of this state for the entire tax year, West Virginia adjusted gross income shall include the accruals specified in subdivision (1) of this subsection, with the applicable modifications described in section forty-four of this article §11-21-44 of this code.

(d) Definitions. —

(1) "Nonresident estate" means an estate of a decedent who was not a resident of this state at the time of his or her death.

(2) "Nonresident trust" means a trust which is not a resident trust, as defined in section seven of this article §11-21-7 of this code.

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

(e) Effective date. — (1) The provisions of this section shall apply to taxable years beginning after December 31, 1991. As to taxable years beginning prior to that date, the provisions

of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

(2) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

§11-21-40. Credit for income tax of state of residence.

(a) General. — A nonresident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, of which the taxpayer is a resident.

(b) Limitation. — The credit under this section shall not exceed either:

(1) The percentage of the other tax determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of his or her income subject to such other tax, or

(2) The percentage of the tax otherwise due under this article, determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of the taxpayer's West Virginia income.

(c) Exceptions. — No credit may be allowed under this section for a taxable year beginning after December 31, 1987, except pursuant to a written agreement between this state and the nonresident individual's state of residence. The State Tax Commissioner is hereby authorized to enter into such agreements necessary to effectuate the purpose of this section when he or she determines that such agreements are in the best interest of this state and its residents.

(d) Definition. — For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The income derived from West Virginia sources by an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code), determined in accordance with the applicable rules of section thirty-two §11-21-32 of this code as in the case of a

22 nonresident individual.

§11-21-51. Returns and liabilities.

1 (a) General. — On or before the 15th day of the fourth month following the close of a
2 taxable year, an income tax return under this article shall be made and filed by or for:

3 (1) Every resident individual required to file a federal income tax return for the taxable year,
4 or having West Virginia adjusted gross income for the taxable year, determined under section
5 twelve of this article §11-21-12 of this code in excess of the sum of his or her West Virginia
6 personal exemptions: *Provided*, That the Tax Commissioner shall by legislative rule specify
7 circumstances when an individual is not required to file a return as a result of the application of
8 section ten of this article §11-21-10 of this code;

9 (2) Every resident estate or trust (except non-grantor trusts administered by licensed
10 private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and
11 those defined by §11-21-3(e) of this code) required to file a federal income tax return for the
12 taxable year, or having any West Virginia taxable income for the taxable year, determined under
13 section 18 of this article §11-21-18 of this code;

14 (3) Every nonresident individual having any West Virginia adjusted gross income for the
15 taxable year, determined under section thirty-two of this article §11-21-32 of this code, in excess of
16 the sum of his or her West Virginia personal exemptions, except when all of such nonresident
17 individual's West Virginia source income is taxed on a composite return filed under this article for
18 the taxable year; and

19 (4) Every nonresident estate or trust having items of income or gain derived from West
20 Virginia sources, determined in accordance with the applicable rules of section thirty-two of this
21 article §11-21-32 of this code as in the case of a nonresident individual, in excess of its West
22 Virginia exemption.

23 (b) Husband and wife. —

24 (1) If the federal income tax liability of husband or wife is determined on a separate federal

income tax return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in subdivision (3) of this subsection are determined on a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several; or

(B) They may elect to file separate West Virginia income tax returns on a single or separate form, as may be required by the Tax Commissioner, if they comply with the requirements of the Tax Commissioner in setting forth information, and in such event their tax liabilities shall be separate.

(3) If either husband and/or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the Tax Commissioner, and in such event their tax liabilities shall be separate.

(c) Decedents. — The return of any deceased individual shall be made and filed by his or her executor, administrator or other person charged with his or her property.

(d) Individuals under a disability. — The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), by his or her duly authorized agent.

(e) Estates and trusts. — The return for an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code) shall be made and filed by the fiduciary.

(f) Joint fiduciaries. — If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Tax a debt. — Any tax under this article, and any increase, interest or penalty thereon,

51 shall, from the time it is due and payable, be a personal debt of the person liable to pay the same,
52 to the State of West Virginia.

53 (h) Cross reference. — For provisions as to information returns by partnerships, employers
54 and other persons, see section fifty-eight of this article §11-21-58 of this code. For provisions as to
55 composite returns of nonresidents, see section fifty-one-a of this article §11-21-51a of this code.
56 For provisions as to information returns by electing small business corporations, see section
57 thirteen-b, article twenty-four of this chapter.

58 (i) Effective date. — This section, as amended by this act in the year 1996, shall apply to all
59 taxable years beginning after December 31, 1995.

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

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

9 (b) Amount of withholding tax. —

10 (1) In general. — The amount of withholding tax payable by any partnership, S corporation,
11 estate or trust (except non-grantor trusts administered by licensed private trust companies created
12 pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this
13 code), under subsection (a) of this section, shall be equal to four percent of the effectively
14 connected taxable income of the partnership, S corporation, estate or trust (except non-grantor

trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code) or estate: *Provided*, That for taxable years commencing on or after January 1, 2008, the amount of withholding tax payable by any partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code), under subsection (a) of this section, shall be equal to six and one-half percent of the effectively connected taxable income of the partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code and those defined by §11-21-3(e) of this code), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate.

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

(c) When withholding is not required. — Withholding may not be required:

(1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision, a person is exempt from the tax imposed by this article only if such person is, by reason of that person's purpose or activities, exempt from paying federal income taxes on such person's West Virginia source income. The pass-through

entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or §11-24-1 *et seq.* of this code; or

(2) On distributions to a corporation which is exempt from the tax imposed by §11-24-1 *et seq.* of this code. For purposes of this subdivision, a corporation is exempt from the tax imposed by §11-24-1 *et seq.* of this code only if the corporation, by reason of its purpose or activities is exempt from paying federal income taxes on the corporation's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by §11-24-1 *et seq.* of this code provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable year filed under this article or §11-24-1 *et seq.* of this code; or

(3) On distributions when compliance will cause undue hardship on the pass-through entity: *Provided*, That no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his or her discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or

(4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for

federal income tax is not treated as a partnership under this article and is not required to withhold under this section. However, such unincorporated organizations shall make and file with the Tax Commissioner a true and accurate return of information under §11-21-58(c) of this code, under such rules and in such form and manner as the Tax Commissioner may prescribe, setting forth: (A) The amount of fixed or determinable gains, profits, and income; and (B) the name, address and taxpayer identification number of persons receiving fixed or determinable gains, profits or income from the nonpartnership venture.

(5) Publicly traded partnerships. — A publicly traded partnership, as defined in §11-21A-1 of this code, that is treated as a partnership for federal income tax purposes for the taxable year, is exempt from the withholding requirements of §11-21-71a of this code of this section, if the following information is provided to the Tax Commissioner: The name, address, taxpayer identification number, and West Virginia source income of each partner that had an interest in the publicly traded partnership during the taxable year. This information shall be provided in an electronic format approved by the Tax Commissioner.

(d) Payment of withheld tax. —

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

(A) S corporations. — The 15th day of the third month following the close of the taxable year of the S corporation along with the annual information return due under §11-24-1 *et seq.* of this code, unless paragraph (C) of this subdivision applies.

(B) Partnerships, estates, and trusts. — The 15th day of the fourth month following the close of the taxable year of the partnership, estate or trust, with the annual return of the partnership, estate or trust due under this article, unless paragraph (C) of this subdivision applies: *Provided*, That for tax years beginning after December 31, 2015, partnerships shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return of the

partnership due under this article, on the 15th day of the third month following the close of the taxable year of the partnership, unless paragraph (C) of this subdivision applies.

(C) Composite returns. — The 15th day of the fourth month of the taxable year with the composite return filed under §11-21-51a of this code: *Provided*, That for tax years beginning after December 31, 2015, partnerships or partners in a partnership filing composite returns under §11-21-51a of this code shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return due under this article, on the 15th day of the third month following the close of the taxable year.

(2) Special rules. —

(A) Where there is extension of time to file return. — An extension of time for filing the returns referenced in subdivision (1) of this subsection does not extend the time for paying the amount of withholding tax due under this section. In this situation, the pass-through entity shall pay, by the date specified in subdivision (1) of this subsection, at least 90 percent of the withholding tax due for the taxable year, or 100 percent of the tax paid under this section for the prior taxable year, if such taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing the return and the amount of tax due with such return is 10 percent or less of the tax due under this section for the taxable year, no additions to tax may be imposed under §11-10-1 *et seq.* of this code with respect to balance so remitted. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

(B) Deposit in trust for Tax Commissioner. — The Tax Commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this

state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section, at any earlier time or times.

(e) Effectively connected taxable income. — For purposes of this section, the term "effectively connected taxable income" means the taxable income or portion thereof of a partnership, S corporation, estate or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under §11-21-32 of this code and such rules as the Tax Commissioner may prescribe, whether the amount is actually distributed or is determined to have been distributed for federal income tax purposes.

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

(1) Allowance of credit. — Each nonresident partner, nonresident shareholder, or nonresident beneficiary shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, S corporation, estate or trust under this section: *Provided*, That when the distribution is to a corporation taxable under §11-24-1 *et seq.* of this code, the credit allowed by this section shall be applied against the distributee corporation's liability for tax under §11-24-1 *et seq.* of this code.

(2) Credit treated as distributed to partner, shareholder, or beneficiary. — Except as provided in rules, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share of any withholding tax paid by the partnership, S corporation, estate or trust under this section shall be treated as distributed to the partner by the partnership, or to the shareholder by the S corporation, or to the beneficiary by the estate or trust on the earlier of:

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

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

(g) Regulations. — The Tax Commissioner shall prescribe such rules as may be necessary

to carry out the purposes of this section.

(h) Information statement. —

(1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the Tax Commissioner, showing the amount of West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate or trust, to the nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the Tax Commissioner may require.

(2) A copy of the information statements required by this subsection shall be filed with the West Virginia return filed under this article (or §11-24-1 *et seq.* of this code for S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement shall be furnished to each nonresident distributee on or before the due date of the pass-through entity's return under this article or §11-24-1 *et seq.* of this code for the taxable year, including extensions of time for filing such return, or such later date as may be allowed by the Tax Commissioner.

(i) Liability for withheld tax. — Every person required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years (of such persons) beginning after December 31, 1991, except as otherwise provided in this section. The amount of tax required to be withheld and paid over to the Tax Commissioner shall be considered the tax of the partnership, estate, or trust, as the case may be, for purposes of §11-9-1 *et seq.* and §11-10-1 *et seq.* of this code. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No partner, S corporation shareholder, or beneficiary of a trust or estate, may have a right of action against the partnership, S corporation, estate, or trust, in respect to any moneys withheld from the person's distributive share and paid over to the Tax

Commissioner in compliance with or in intended compliance with this section.

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

(k) Distributee agreements. —

(1) The Tax Commissioner shall permit a nonresident distributee to file with a pass-through entity, on a form prescribed by the Tax Commissioner, the agreement of the nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or §11-24-1 *et seq.* of this code in the case of a C corporation, on the distributee with respect to the effectively connected taxable income of the pass-through entity; and (B) to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or §11-24-1 *et seq.* of this code in the case of a C corporation), together with related interest, penalties, additional amounts and additions to tax, owed by the nonresident distributee.

(2) A nonresident distributee electing to execute an agreement under this subsection shall file a complete and properly executed agreement with each pass-through entity for which this election is made, on or before the last day of the first taxable year of the pass-through entity in respect of which the agreement applies. The pass-through entity shall file a copy of that agreement with the Tax Commissioner as provided in subdivision (5) of this subsection.

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

(4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity may not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable

year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee's continuing failure to comply with the terms of the agreement.

(5) The pass-through entity shall file with the Tax Commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or §11-24-1 *et seq.* of this code if S corporations. If the pass-through entity fails to timely file with the Tax Commissioner a copy of an agreement executed by a distributee and furnished to the pass-through entity in accordance with this section, then the pass-through entity shall remit to the Tax Commissioner an amount equal to the amount that should have been withheld under this section from the nonresident distributee. The pass-through entity may recover payment made pursuant to the preceding sentence from the distributee on whose behalf the payment was made.

(I) Definitions. — For purposes of this section, the following terms mean:

(1) Corporation. — The term "corporation" includes associations, joint stock companies, and other entities which are taxed as corporations for federal income tax purposes.

(A) C corporation. — The term "C corporation" means a corporation which is not an S corporation for federal income tax purposes.

(B) S corporation. — The term "S corporation" means a corporation for which a valid election under Section 1362(a) of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

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

(3) Internal Revenue Code. — The term "Internal Revenue Code" means the Internal

Revenue Code of 1986, as amended, through the date specified in §11-21-9 of this code.

(4) Nonresident distributee. — The term "nonresident distributee" includes any individual who is treated as a nonresident of this state under this article; and any partnership, estate, trust, or corporation whose commercial domicile is located outside this state.

(5) Partner. — The term "partner" includes a member of a partnership as that term is defined in this section, and an equity owner of any other pass-through entity.

(6) Partnership. — The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. "Partnership" does not include an unincorporated organization which, under Section 761 of the Internal Revenue Code, is not treated as a partnership for the taxable year for federal income tax purposes.

(7) "Pass-through entity" means any partnership or other business entity, that is not subject to tax under §11-24-1 *et seq.* of this code, imposing tax on C corporations or other entities taxable as a C corporation for federal income tax purposes.

(8) Taxable period. — The term "taxable period" means, if an S corporation, any taxable year or portion of a taxable year during which a corporation is an S corporation.

(9) Taxable year of the pass-through entity. — The term "taxable year of the pass-through entity" means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

(m) Effective date. — The provisions of this section shall first apply to taxable years of pass-through entities beginning after December 31, 1991.

(n) This section as amended in the year 2019 shall apply, without regard to the taxable year, to taxes owed attributable to federal determinations that become final on or after the effective date of this section enacted in the year 2019.

CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in, the trust has situs in, or a trustee is a resident of the designated jurisdiction;

(2) A trust director's principal place of business is located in, or a trust director is a resident of the designated jurisdiction; or

(3) All or part of the administration occurs in the designated jurisdiction.

(b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

(c) When the proposed transfer of a trust's principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the current beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. A corporate trustee that maintains a place of business in West Virginia where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries has not transferred its principal place of administration merely because all or a significant portion of the administration of the trust is performed outside West Virginia. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

23 (2) The address and telephone number at the new location at which the trustee can be
24 contacted;

25 (3) An explanation of the reasons for the proposed transfer;

26 (4) The date on which the proposed transfer is anticipated to occur; and

27 (5) The date, not less than 60 days after the giving of the notice, by which the current
28 beneficiary must notify the trustee of an objection to the proposed transfer.

29 (d) The authority of a trustee under this section to transfer a trust's principal place of
30 administration to another state or to a jurisdiction outside the United States terminates if a current
31 beneficiary notifies the trustee of an objection to the proposed transfer on or before the date
32 specified in the notice.

33 (e) In connection with a transfer of the trust's principal place of administration, the trustee
34 may transfer some or all of the trust property to a successor trustee designated in the terms of the
35 trust instrument or appointed pursuant to §44D-7-704 of this code.

NOTE: The purpose of this bill is to exempt from state personal income taxation Non-grantor Trusts which have a tax situs in West Virginia.

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