

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Enrolled**

**Senate Bill 461**

BY SENATOR BLAIR

[Passed March 8, 2019; in effect from passage]



1 AN ACT to amend and reenact §11-21-77 of the Code of West Virginia, 1931, as amended; and  
2 to amend and reenact §29-22-15a of said code, all relating generally to lottery prizes;  
3 defining terms; extending personal income tax withholding requirements to certain lottery  
4 winnings; designating lottery winnings as source income; specifying gross prize threshold  
5 for lottery winner anonymity election; specifying exemption from Freedom of Information  
6 Act; specifying treatment of lottery pool members; eliminating fee for anonymity option  
7 election; specifying limitations and exceptions to anonymity pursuant to lawful legal  
8 process, disclosure to local, state, or federal tax agencies, and agencies lawfully entitled  
9 to information; authorizing promulgation of rules; specifying method for determining value  
10 of gross prize; and specifying effective date.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 11. TAXATION.**

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-77. Extension of withholding to certain lottery winnings; lottery winnings source income.**

1 (a) *Lottery winnings subject to withholding.* — Gross prizes, as defined in §29-22-15a of  
2 this code, of more than \$5,000 from any lottery prize awarded by the West Virginia State Lottery  
3 Commission are subject to withholding under §11-21-1 *et seq.* of this code. The West Virginia  
4 State Lottery Commission in making any lump sum payment, annuity payment or installment  
5 payment of a lottery prize subject to withholding shall deduct and withhold from the payment a tax  
6 in an amount equal to six and one-half percent of the payment.

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

11           (c) *Coordination with other sections.* — For the purposes of determining liability for  
12 payment of taxes and filing of returns, payments of a lottery prize subject to withholding shall be  
13 treated as if they were wages paid by an employer to an employee, but shall not be treated as  
14 compensation for personal services performed within this state for purposes of §11-21-40 and  
15 §11-21-41 of this code.

16           (d) *Source Income.* — (1) All lottery prizes awarded by the West Virginia State Lottery  
17 Commission shall be taxed as West Virginia source income and shall be subject to all state and  
18 federal income tax laws and rules and regulations. Pursuant to this section, state income taxes  
19 shall be withheld from prizes paid whenever federal income taxes are required to be withheld  
20 under the Internal Revenue Code.

21           (2) All prizes awarded by the West Virginia State Lottery Commission shall be taxed as  
22 West Virginia source income and taxable to nonresidents in accordance with §11-21-32 and §11-  
23 21-44 of this code and shall be subject to withholding in accordance with this section.

24           (3) The sourcing provisions of this section shall apply to all prizes awarded by the West  
25 Virginia State Lottery Commission, without regard to the form of payment or the period of time  
26 over which payments are made. Lump sum payments, installment payments, annuity payments,  
27 and winnings payments that are sold, assigned, transferred, or otherwise split, shared, or  
28 conveyed to or among parties other than the original prize winner retain their identity as prizes  
29 awarded by the West Virginia State Lottery Commission, and retain their character as West  
30 Virginia source income.

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

36 (f) The changes made to this section during the 2019 regular session of the Legislature  
37 shall take effect immediately upon the effective date of this section.

## CHAPTER 29. MISCELLANENOUS BOARDS AND OFFICERS.

### ARTICLE 22. STATE LOTTERY ACT.

#### §29-22-15a. Option for winners of draw games to remain anonymous.

1 (a) A person entitled to collect a gross prize equal to or exceeding \$1 million from a winning  
2 West Virginia State Lottery draw game ticket may remain anonymous: *Provided*, That such  
3 anonymity only applies to disclosure by the West Virginia State Lottery, and its employees and  
4 officers, of the name, personal contact information, and likeness of the person so entitled:  
5 *Provided, however*, That this provision shall not be construed to prevent or impede the lawful  
6 disclosure of such information in any court of record or administrative forum pursuant to lawful  
7 legal process or disclosure of such information to any taxing agency of any local, state, or federal  
8 government or any local, state, or federal agency lawfully entitled to such information, including  
9 agencies of another state and lottery agencies of states participating in a multistate or  
10 multijurisdictional lottery: *Provided further*, That the name, personal contact information, and  
11 likeness of the person so entitled shall not be subject to disclosure under the Freedom of  
12 Information Act set forth in §29B-1-1 *et seq.* of this code.

13 (b) If the person entitled to collect a gross prize equal to or exceeding \$1 million from a  
14 winning draw game ticket desires to remain anonymous, he or she shall contact the State Lottery  
15 Director in writing or appear at the state lottery headquarters in person, concerning his or her  
16 desire to remain anonymous: *Provided*, That such a request only permits the person's name,  
17 personal contact information, and likeness to remain anonymous. The State Lottery Director may  
18 provide by legislative, procedural, or interpretive rule such administrative and timeliness  
19 requirements for submission of a request for anonymity as may be necessary or convenient,  
20 promulgation of which is hereby authorized.

21 (1) At the time of his or her request to remain anonymous, the person shall provide his or  
22 her contact information, including any personal telephone number, residential address, electronic  
23 mail address, and a properly executed Internal Revenue Service Form W-2G.

24 (2) When a group forms a lottery pool to purchase lottery tickets and the lottery pool wins  
25 the prize, only those members of the lottery pool that each, individually, win a gross prize equal  
26 to or exceeding \$1 million, or who, as a result of their lottery pool membership, are entitled to a  
27 share of a gross prize equal to or exceeding \$1 million or more, may elect to remain anonymous.

28 (c) Any request to remain anonymous may be made in writing, by certified mail addressed  
29 to the West Virginia State Lottery Director, P.O. Box 2067, Charleston, West Virginia 25327, by  
30 electronic mail to an email address that is to be established by the West Virginia State Lottery  
31 prior to the effective date of this section, or in person at the state lottery headquarters. Once  
32 established, the secure email address shall be posted on the West Virginia Lottery's website prior  
33 to the effective date of this section: *Provided*, That notwithstanding other provisions of this  
34 subsection, the West Virginia State Lottery Director may prescribe by emergency, legislative,  
35 procedural, or interpretive rule such transmittal, documentation, timing, and administrative  
36 requirements as may be necessary or convenient for submission and processing of requests for  
37 anonymity, and such rule requirements and conditions may differ from, and shall supersede, those  
38 set forth in this subsection.

39 (d) Upon receiving a request to remain anonymous, the director shall contact the person  
40 requesting anonymity and schedule an appointment to meet at any county, regional, or state  
41 lottery office to confirm the winning number and to otherwise make arrangements to protect the  
42 anonymity of the requesting person.

43 (e) The requirements of this section enacted in 2018 are effective on January 1, 2019. The  
44 amendments to this section enacted in 2019 shall take effect upon passage and apply to prizes  
45 awarded on and after that date.

46 (f) *Definitions.* — For purposes of this section:

47           (1) *Annuity*. — The term “annuity” means periodic payments of a lottery prize which are  
48 payable over a period greater than one year and which are treated under Section 72 of the Internal  
49 Revenue Code, as defined in §11-21-9 of this code, as amounts received as an annuity, whether  
50 or not the periodic payments are variable in amount.

51           (2) *Gross prize*. — The term “gross prize” means the value, whether in money or other  
52 property, proceeding from and resulting from a lottery win, without any deduction for gaming  
53 losses, the cost of ticket purchases, the amount paid to obtain a chance to win, the amount paid  
54 for eligibility to play, or eligibility for selection as a prize recipient or any expenses or reductions  
55 of any kind. Gross prize includes amounts received whether paid in cash, cash equivalents, or  
56 property, or any noncash form, including real property, personal property, and services. Real  
57 property, personal property, and services must be valued at fair market value for purposes of this  
58 section. Gross prize includes amounts paid in a lump sum or structured as an annuity paid over  
59 time or as installment payments.

60           (A) A gross prize paid or payable as an annuity or a stream of installment payments shall  
61 be valued as the total aggregate amount of annuity payments or installment payments to be  
62 received over the life of the annuity or stream of installment payments, without discount for present  
63 value or the time value of money or payments.

64           (B) In the case of annuities or a stream of installment payments payable for a fixed period  
65 of time, the annuity or a stream of installment payments shall, for the limited purpose of  
66 determining the \$1 million threshold amount specified in subsection (a) of this section, be valued  
67 over such fixed period.

68           (C) In the case of annuities or a stream of installment payments payable for life or for an  
69 indefinite period of time of 30 years or more, the annuity or stream of installment payments shall,  
70 for the limited purpose of determining the \$1 million threshold amount specified in §29-22-15a(a)  
71 of this code, be valued as if it were paid over a fixed period of 30 years.

72           (D) In the case of annuities or a stream of installment payments payable for an indefinite  
73 but limited period of time of less than 30 years, the annuity or stream of installment payments  
74 shall, for the limited purpose of determining the \$1 million threshold amount specified in §29-22-  
75 15a(a) of this code, be valued as if it were paid over a fixed period equal to the maximum period  
76 of years, or period of time over which it may be paid.

77           (E) In the case of an annuity or a stream of installment payments, payments of which are  
78 to be adjusted by an inflation factor or other factor over time, the annuity or stream of installment  
79 payments shall, for the limited purpose of determining the \$1 million threshold amount specified  
80 in §29-22-15a(a) of this code, be valued at the aggregate amount of payments to be received  
81 over the life of the annuity or stream of installment payments as if all payments are equal to the  
82 first payment, without adjustment for inflation or other factors.

83           (3) *Lottery pool*. — The term “lottery pool” means a group of lottery players who pool their  
84 money to buy lottery tickets, and who purchase tickets for a single drawing.



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

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2019.

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*Governor*