

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 461

BY SENATOR BLAIR

[Introduced January 29, 2019; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-21-77 of the Code of West Virginia, 1931, as amended; and to
2 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.* — ~~Proceeds~~ Gross prizes, as defined in §29-
2 22-15a of this code, of more than \$5,000 from any lottery prize awarded by the West Virginia
3 State Lottery Commission ~~is~~ are subject to withholding under §11-21-1 et seq. of this code. The
4 ~~commission~~ West Virginia State Lottery Commission in making any lump sum payment, annuity
5 payment or installment payment of a lottery prize subject to withholding shall deduct and withhold
6 from the payment a tax 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 ~~winnings which~~
8 ~~are subject~~ a lottery prize subject to withholding shall furnish to the person making the payment,
9 a statement made under the penalties of perjury, containing the name, address, and taxpayer

10 identification number of the person receiving the payment and each person entitled to any portion
11 of the payment.

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

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

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

28 (2) All prizes awarded by the West Virginia State Lottery Commission shall be taxed as
29 West Virginia source income and taxable to nonresidents in accordance with §11-21-32 and §11-
30 21-44 of this code and shall be subject to withholding in accordance with this section.

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

36 awarded by the West Virginia State Lottery Commission, and retain their character as West
37 Virginia source income.

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

43 (f) The changes made to this section during the 2019 regular session of the Legislature
44 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 ~~proceeds~~ a gross prize equal to or exceeding one million
2 ~~dollars~~ \$1 million from a winning West Virginia State Lottery draw game ticket may remain
3 anonymous: *Provided*, That such anonymity only applies to disclosure by the West Virginia State
4 Lottery, and its employees and officers, of the name, personal contact information, and likeness
5 of the person so entitled: *Provided, however,* That this provision shall not be construed to prevent
6 or impede the lawful disclosure of such information in any court of record or administrative forum
7 pursuant to lawful legal process or disclosure of such information to any taxing agency of any
8 local, state, or federal government or any local, state, or federal agency lawfully entitled to such
9 information, including agencies of another state and lottery agencies of states participating in a
10 multistate or multijurisdictional lottery: *Provided further,* That the name, personal contact
11 information, and likeness of the person so entitled shall not be subject to disclosure under the
12 Freedom of Information Act set forth in §29B-1-1 et seq. of this code.

13 (b) If the person entitled to collect ~~proceeds~~ a gross prize equal to or exceeding \$1 million
14 from a winning draw game ticket desires to remain anonymous, he or she shall contact the State
15 Lottery Director in writing or appear at the state lottery headquarters in person, concerning his or
16 her desire to remain anonymous: *Provided*, That such a request only permits ~~that~~ the person's
17 name, personal contact information, and likeness to remain anonymous. The State Lottery
18 Director may provide by legislative, procedural, or interpretive rule such administrative and
19 timeliness requirements for submission of a request for anonymity as may be necessary or
20 convenient, 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) If a person elects to remain anonymous pursuant to this section, he or she shall remit~~
44 ~~5 percent of his or her winnings to the State Lottery Fund~~

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

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

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

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

62 (A) A gross prize paid or payable as an annuity or a stream of installment payments shall
63 be valued as the total aggregate amount of annuity payments or installment payments to be

64 received over the life of the annuity or stream of installment payments, without discount for present
65 value or the time value of money or payments.

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

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

74 (D) In the case of annuities or a stream of installment payments payable for an indefinite
75 but limited period of time of less than 30 years, the annuity or stream of installment payments
76 shall, for the limited purpose of determining the \$1 million threshold amount specified in §29-22-
77 15a(a) of this code, be valued as if it were paid over a fixed period equal to the maximum period
78 of years, or period of time over which it may be paid.

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

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

NOTE: The purpose of this bill is to provide for personal income tax withholding on certain lottery winnings, to designate lottery winnings as source income, to provide a gross prize threshold for the election of lottery winners to remain anonymous, to eliminate the fee for anonymity election, to specify limitations and exceptions to anonymity, to authorize rulemaking authority, and to establish an effective date.

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