

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5024

By Delegate Criss and Hott

[Originating in the Committee on Finance;

Reported on February 16, 2024]

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

1 (a) Imposition of tax. — A tax determined in accordance with the rates hereinafter set forth
2 in this article is hereby imposed for each taxable year on the West Virginia taxable income of every
3 individual, estate, electing pass-through entity, and trust: Provided, That for tax years beginning on
4 or after January 1, 2024, the income of a licensed private trust company created pursuant to the
5 provisions of §311-1-1 et seq. of this code .

6 (b) Partners and partnerships. — A partnership or other pass-through entity as such shall
7 not be subject to tax under this article, unless the partnership or other pass-through entity elects to
8 be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code.
9 Persons carrying on business as partners or owners of a pass-through entity shall be liable for tax
10 under this article only in their separate or individual capacities, unless the partnership or other
11 pass-through entity elects to be subject to the tax levied under this section for a taxable year
12 pursuant to §11-21-3a of this code. However, partnerships and other pass-through entities are
13 subject to the tax imposed by this article to the extent they elect to pay additional West Virginia
14 income taxes owed that are attributable to final federal partnership audit adjustments under §11-
15 21A-3 of this code.

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

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

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

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

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

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

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

28 (f) Effective date. — This section as amended in 2023 shall apply to taxable years
29 beginning on and after January 1, 2022.

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

1 (a) Rate of tax on individuals (except married individuals filing separate returns),
2 individuals filing joint returns, heads of households, and estates and trusts. — The tax imposed by
3 §11-21-3 of this code on the West Virginia taxable income of every individual (except married
4 individuals filing separate returns); every individual who is a head of a household in the
5 determination of his or her federal income tax for the taxable year; every husband and wife who file
6 a joint return under this article; every individual who is entitled to file his or her federal income tax
7 return for the taxable year as a surviving spouse; and every estate and trust (except licensed
8 private trust companies created pursuant to the provisions of §311-1-1 et seq. of this code) shall be
9 determined in accordance with the following table:

10 If the West Virginia taxable	
11 income is:	The tax is:
12 Not over \$10,000	2.36% of the taxable income
13 Over \$10,000 but not over \$25,000	\$236 plus 3.15% of excess over \$10,000
14 Over \$25,000 but not over \$40,000	\$708.50 plus 3.54% of excess over \$25,000

15	Over \$40,000 but not over \$60,000	\$1,239.50 plus 4.72% of excess over
16		\$40,000
17	Over \$60,000	\$2,183.50 plus 5.12% of excess over
18		\$60,000

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

23	If the West Virginia taxable	
24	income is:	The tax is:
25	Not over \$5,000	2.36% of the taxable income
26	Over \$5,000 but not over \$12,500	\$118 plus 3.15% of excess over \$5,000
27	Over \$12,500 but not over \$20,000	\$354.25 plus 3.54% of excess over \$12,500
28	Over \$20,000 but not over \$30,000	\$619.75 plus 4.72% of excess over \$20,000
29	Over \$30,000	\$1,091.75 plus 5.12% of excess over
30		\$30,000

31 (c) Rate of tax on licensed private trust companies. — In the case of licensed private trust
32 companies created pursuant to §311-1-1 et seq. of this code, there is no tax imposed by §11-21-3
33 of this code.

34 ~~(e)~~ (d) Effect of rates on Nonresident Composite and Withholding Obligations —
35 Notwithstanding any provision of this article to the contrary, for taxable years beginning on and
36 after the retroactive date specific in ~~§11-21-4g(d) of this code~~ subsection (e) of this section,
37 whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or
38 §11-21-77, of this article, with relation to a tax return of, or the tax rate imposed on income of
39 individuals, individuals filing joint returns, heads of households, and estates and trusts (except

40 licensed private trust companies created pursuant to the provisions of §311-1-1 et seq. of this
41 code), the stated percentage shall be changed to 5.12%.

42 (d) (e) Applicability of this section. — The provisions of this section shall be applicable in
43 determining the rates of tax imposed by this article and shall apply retroactively for all taxable
44 years beginning on and after January 1, 2023, and shall be in lieu of the rates of tax specified in
45 §11-21-4e of this code.

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

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

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

7 (2) There shall be added or subtracted, as the case may be, the share of the estate or trust
8 in the West Virginia fiduciary adjustment determined under ~~section nineteen of this article~~ §11-21-
9 19 of this code.

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

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

20 (b) The amendments to this section enacted in the 2005 regular session of the Legislature
21 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.

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

6 (1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an
7 individual, estate or trust, were a resident of this state for the entire taxable year. When
8 determining tentative tax liability under this subdivision, a nonresident shall be allowed the same
9 deductions, exemptions and credits that would be allowable if taxpayer were a resident individual,
10 estate or trust, as the case may be, for the entire taxable year, except that no credit shall be
11 allowed under ~~section twenty of this article~~ §11-21-20 of this code.

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

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

22 (1) The "federal adjusted gross income" of an estate or trust (except licensed private trust
23 companies created pursuant to the provisions of §311-1-1 et seq. of this code) shall be determined
24 as if such estate or trust were an individual; and

25 (2) In the case of a trust (except licensed private trust companies created pursuant to the
26 provisions of §311-1-1 et seq. of this code), "federal adjusted gross income" shall be its "federal
27 adjusted gross income" for the taxable year increased by the amount of any includable gain,
28 reduced by any deductions properly allocable thereto, upon which the tax is imposed for the
29 taxable year pursuant to Section 644 of the Internal Revenue Code.

30 (3) When an electing small business trust as defined in Section 1361(e)(1) of the Internal
31 Revenue Code of 1986, as amended, is a shareholder in one or more electing small business
32 corporations, the portion of the trust's income attributable to electing small business corporation
33 stock held by the trust that is not included in the trust's federal taxable income pursuant to Section
34 641(c) of ~~that code~~ the Internal Revenue Code of 1986 shall be included in West Virginia taxable
35 income of the trust (except licensed private trust companies created pursuant to the provisions of
36 §311-1-1 et seq. of this code).

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

38 (1) For purposes of subdivision (1), subsection (a) of this section, the "federal adjusted
39 gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income
40 for the taxable year, as defined in ~~section nine of this article~~ §11-21-9 of this code, increased or
41 decreased, as the case may be, by the items accrued under ~~subdivision (1), subsection (b),~~
42 ~~section forty-four of this article~~ §11-21-44(b)(1) of this code, to the extent such items are not
43 otherwise included in federal adjusted gross income for the taxable year, and decreased or
44 increased, as the case may be by the items accrued under ~~subdivision (2) of said subsection~~ §11-
45 21-44(b)(2) of this code, to the extent such items are included in federal adjusted gross income for
46 the taxable year; and

47 (2) In computing the tax due as if taxpayer were a resident of this state for the entire tax
48 year, West Virginia adjusted gross income shall include the accruals specified in subdivision (1) of
49 this subsection, with the applicable modifications described in ~~section forty-four of this article §11-~~
50 21-44 of this code.

51 (d) *Definitions.* —

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

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

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

58 (e) *Effective date.* — (1) The provisions of this section shall apply to taxable years
59 beginning after December 31, 1991. As to taxable years beginning prior to that date, the provisions
60 of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully
61 and completely preserved.

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

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

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

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

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

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

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

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

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

18 (2) The income derived from West Virginia sources by an estate or trust (except licensed
19 private trust companies created pursuant to the provisions of §311-1-1 et seq. of this code),
20 determined in accordance with the applicable rules of ~~section thirty-two~~ §11-21-32 of this code as
21 in the case of a nonresident individual.

§11-21-51. Returns and liabilities.

1 (a) *General.* — On or before the fifteenth 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 licensed private trust companies created
10 pursuant to the provisions of §311-1-1 et seq. of this code) required to file a federal income tax

11 return for the taxable year, or having any West Virginia taxable income for the taxable year,
12 determined under ~~section eighteen of this article~~ §11-21-18 of this code;

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

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

22 (b) *Husband and wife.* —

23 (1) If the federal income tax liability of husband or wife is determined on a separate federal
24 income tax return, their West Virginia income tax liabilities and returns shall be separate.

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

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

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

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

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

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

43 (e) *Estates and trusts*. — The return for an estate or trust (except licensed private trust
44 companies created pursuant to the provisions of §311-1-1 et seq. of this code) shall be made and
45 filed by the fiduciary.

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

48 (g) *Tax a debt*. — Any tax under this article, and any increase, interest or penalty thereon,
49 shall, from the time it is due and payable, be a personal debt of the person liable to pay the same,
50 to the State of West Virginia.

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

56 (i) *Effective date*. — This section, as amended by this act in the year 1996, shall apply to all
57 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 licensed private trust companies created pursuant to the provisions of §311-
12 1-1 et seq. of this code), under subsection (a) of this section, shall be equal to four percent of the
13 effectively connected taxable income of the partnership, S corporation, estate or trust (except
14 licensed private trust companies created pursuant to the provisions of §311-1-1 et seq. of this
15 code), as the case may be, which may lawfully be taxed by this state and which is allocable to a
16 nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust (except
17 licensed private trust companies created pursuant to the provisions of §311-1-1 et seq. of this
18 code) or estate: *Provided*, That for taxable years commencing on or after January 1, 2008, the
19 amount of withholding tax payable by any partnership, S corporation, estate or trust (except
20 licensed private trust companies created pursuant to the provisions of §311-1-1 et seq. of this
21 code), under subsection (a) of this section, shall be equal to six and one-half percent of the
22 effectively connected taxable income of the partnership, S corporation, estate or trust (except
23 licensed private trust companies created pursuant to the provisions of §311-1-1 et seq. of this
24 code), as the case may be, which may lawfully be taxed by this state and which is allocable to a
25 nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate.

26 (2) Credits against tax. — When determining the amount of withholding tax due under this
27 section, the pass-through entity may apply any tax credits allowable under this chapter to the
28 pass-through entity which pass through to the nonresident distributees: *Provided*, That in no event

29 may the application of any credit or credits reduce the tax liability of the distributee under this
30 article to less than zero.

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

32 (1) On distribution to a person, other than a corporation, who is exempt from the tax
33 imposed by this article. For purposes of this subdivision, a person is exempt from the tax imposed
34 by this article only if such person is, by reason of that person's purpose or activities, exempt from
35 paying federal income taxes on such person's West Virginia source income. The pass-through
36 entity may rely on the written statement of the person claiming to be exempt from the tax imposed
37 by this article provided the pass-through entity discloses the name and federal taxpayer
38 identification number for all such persons in its return for the taxable year filed under this article or
39 §11-24-1 *et seq.* of this code; or

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

48 (3) On distributions when compliance will cause undue hardship on the pass-through
49 entity: *Provided*, That no pass-through entity shall be exempt under this subdivision from
50 complying with the withholding requirements of this section unless the Tax Commissioner, in his or
51 her discretion, approves in writing the pass-through entity's written petition for exemption from the
52 withholding requirements of this section based on undue hardship. The Tax Commissioner may
53 prescribe the form and contents of such a petition and specify standards for when a pass-through
54 entity will not be required to comply with the withholding requirements of this section due to undue

55 hardship. Such standards shall take into account (among other relevant factors) the ability of a
56 pass-through entity to comply at reasonable cost with the withholding requirements of this section
57 and the cost to this state of collecting the tax directly from a nonresident distributee who does not
58 voluntarily file a return and pay the amount of tax due under this article with respect to such
59 distributions; or

60 (4) On distributions by nonpartnership ventures. An unincorporated organization that has
61 elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for
62 federal income tax is not treated as a partnership under this article and is not required to withhold
63 under this section. However, such unincorporated organizations shall make and file with the Tax
64 Commissioner a true and accurate return of information under §11-21-58(c) of this code, under
65 such rules and in such form and manner as the Tax Commissioner may prescribe, setting forth: (A)
66 The amount of fixed or determinable gains, profits, and income; and (B) the name, address and
67 taxpayer identification number of persons receiving fixed or determinable gains, profits or income
68 from the nonpartnership venture.

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

76 (d) Payment of withheld tax. —

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

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

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

90 (C) Composite returns. — The 15th day of the fourth month of the taxable year with the
91 composite return filed under §11-21-51a of this code: *Provided*, That for tax years beginning after
92 December 31, 2015, partnerships or partners in a partnership filing composite returns under §11-
93 21-51a of this code shall pay the amount required to be withheld to the Tax Commissioner, along
94 with the annual return due under this article, on the 15th day of the third month following the close
95 of the taxable year.

96 (2) Special rules. —

97 (A) Where there is extension of time to file return. — An extension of time for filing the
98 returns referenced in subdivision (1) of this subsection does not extend the time for paying the
99 amount of withholding tax due under this section. In this situation, the pass-through entity shall
100 pay, by the date specified in subdivision (1) of this subsection, at least 90 percent of the
101 withholding tax due for the taxable year, or 100 percent of the tax paid under this section for the
102 prior taxable year, if such taxable year was a taxable year of 12 months and tax was paid under
103 this section for that taxable year. The remaining portion of the tax due under this section, if any,
104 shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this
105 subsection. If the balance due is paid by the last day of the extension period for filing the return and

106 the amount of tax due with such return is 10 percent or less of the tax due under this section for the
107 taxable year, no additions to tax may be imposed under §11-10-1 *et seq.* of this code with respect
108 to balance so remitted. If the amount of withholding tax due under this section for the taxable year
109 is less than the estimated withholding taxes paid for the taxable year by the pass-through entity,
110 the excess shall be refunded to the pass-through entity or, at its election, established as a credit
111 against withholding tax due under this section for the then current taxable year.

112 (B) Deposit in trust for Tax Commissioner. — The Tax Commissioner may, if the
113 commissioner believes such action is necessary for the protection of trust fund moneys due this
114 state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and
115 withheld under this section, at any earlier time or times.

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

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

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

130 (2) Credit treated as distributed to partner, shareholder, or beneficiary. — Except as
131 provided in rules, a nonresident partner's share, a nonresident shareholder's share, or a

132 nonresident beneficiary's share of any withholding tax paid by the partnership, S corporation,
133 estate or trust under this section shall be treated as distributed to the partner by the partnership, or
134 to the shareholder by the S corporation, or to the beneficiary by the estate or trust on the earlier of:

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

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

139 (g) Regulations. — The Tax Commissioner shall prescribe such rules as may be necessary
140 to carry out the purposes of this section.

141 (h) Information statement. —

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

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

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

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

173 (k) Distributee agreements. —

174 (1) The Tax Commissioner shall permit a nonresident distributee to file with a pass-through
175 entity, on a form prescribed by the Tax Commissioner, the agreement of the nonresident
176 distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or
177 §11-24-1 *et seq.* of this code in the case of a C corporation, on the distributee with respect to the
178 effectively connected taxable income of the pass-through entity; and (B) to be subject to personal
179 jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or
180 §11-24-1 *et seq.* of this code in the case of a C corporation), together with related interest,
181 penalties, additional amounts and additions to tax, owed by the nonresident distributee.

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

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

189 (4) Upon receipt of such an agreement properly executed by the nonresident distributee,
190 the pass-through entity may not withhold tax under this section for the taxable year of the pass-
191 through entity in which the agreement is received by the pass-through entity and for any taxable
192 year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in
193 writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-
194 through entity, in writing, to begin withholding tax under this section because of the distributee' s
195 continuing failure to comply with the terms of the agreement.

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

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

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

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

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

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

217 (3) Internal Revenue Code. — The term "Internal Revenue Code" means the Internal
218 Revenue Code of 1986, as amended, through the date specified in §11-21-9 of this code.

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

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

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

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

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

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

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

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