WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5159

By Delegate Young

[Introduced February 03, 2026; referred to the Committee on Energy and Public Works then Finance]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

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

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

(b) *Withholding tax on income from nonresident natural resources royalty payments.* --

(1) Every lessee of West Virginia real estate who makes a natural resources royalty payment in the course of a trade or business to a lessor who does not reside in the state of West Virginia, shall withhold West Virginia personal income tax on natural resources royalty payments to that lessor.

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

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

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

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

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

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

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

(e) *Annual withholding statements.* --

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

(2) Every lessee required to withhold tax under this section shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments may, at the discretion of the Tax Commissioner, be established by the commissioner to match as closely as practicable the due dates in effect for employer's withholding under §11-21-74 of this code: *Provided*, That not later than January 31, 2027, and January 31 of each year thereafter, lessees shall submit to the Tax Commissioner the annual reconciliation of West Virginia income tax withheld, together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, 1099s, furnished to each lessor for income from natural resources royalty payments from the preceding calendar year, notwithstanding the fact that the lessee may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31: *Provided, however*, That the Tax Commissioner may by rule prescribe one or more different due dates for the annual reconciliation, and withholding statements, based upon reporting and accounting practices of natural resources producers or particular segments of the natural

resourced production industry, as may be appropriate. Notwithstanding the provisions of this section, where the average quarterly amount deducted and withheld by any lessee is less than $150 and the aggregate for the calendar year can reasonably be expected to be less than $600, the Tax Commissioner may by rule permit a lessee to file an annual return and pay over to the commissioner the taxes deducted and withheld on a due date prescribed by the commissioner.

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

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

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

(f) *Rulemaking.* -- The Tax Commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this section. The Tax Commissioner may also promulge emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions this section.

(g) *Effective date*. -- The provisions of this section apply to all taxable years beginning after December 31, 2026.

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

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