

# PERSONAL TAXES

1. Personal Income Tax (W. Va. Code §11-21)
2. Estate Tax (W. Va. Code §11-11)

## PERSONAL INCOME TAX

State Personal Income Tax is imposed on the West Virginia taxable income of resident individuals, estates and trusts wherever their income is earned. Nonresident individuals, estates and trusts are also subject to this tax on the income from West Virginia sources. Residency for personal income tax purposes is determined by location, duration and intent; it is a somewhat complex legal concept and is explained more fully later in this section.

Corporations, partnerships (but not partners), and certain trusts and associations are exempt from West Virginia Personal Income Tax. Individuals, estates and trusts that are required to file a federal Personal Income Tax return or that have West Virginia adjusted gross income in excess of their total personal exemptions must file a West Virginia return. Individuals, estates and trusts are also required to file West Virginia returns even though they may be exempt from filing a federal return or may have correctly reported zero federal tax liability.

Almost all taxpayers who file Personal Income Tax returns file only one return per year. However, taxpayers whose West Virginia adjusted gross income other than wages are expected to exceed \$400 plus the amount allowed for the personal exemptions must file quarterly returns and pay estimated tax. Taxpayers who fail to remit quarterly estimated tax payments may be subject to penalties.

The annual return of a farmer will be treated as his declaration of estimated tax if the annual return is filed on or before March 1 of the succeeding year and the tax shown to be due on the return is paid in full at the time of filing.

Tax returns must also be filed by employers who are required to withhold tax from wages they pay to their employees. The frequency of filing withholding tax returns depends on the amount of tax the employer withholds. Every employer who withholds more than \$100 per month must file monthly withholding returns with the Department of Tax and Revenue. Employers who withhold less than \$100 per month are required to file quarterly returns although the Department of Tax and Revenue may permit an employer who withholds less than \$25 in a calendar quarter and the aggregate for the calendar year can reasonably be expected to be less than \$100 to file an annual return. Employers whose average withholding tax payment per calendar month for the preceding calendar year exceeded \$100,000 are required to remit the tax attributable to the first fifteen days of June on or before June 23 each year. The employer may elect to remit an amount equal to 50 percent of the employer's liability for compensation payable or paid to employees in May. The amount of tax paid for the first fifteen days of June is credited against the total liability for the month of June.

Partnerships, S corporations and trusts who have nonresident partners or shareholders or beneficiaries must withhold tax from the income paid to these individuals and corporations at a rate of 4 percent if the organization has income derived from West Virginia sources. Where the income is paid to a corporation, the tax is applied against the CNIT liability. Individual shareholders may elect not to have tax withheld from their income distribution through execution of a pass-through entity agreement.

The West Virginia Personal Income Tax is said to be a conformity statute because any term used in this law has the same meaning as when it is used in a comparable context in federal income tax law unless a different meaning is clearly required.

#### How Tax Liability is Determined

Computation of West Virginia taxable income begins with federal adjusted gross income to which specific increases and/or decreases are made. A taxpayer generally determines his tax liability by computation using tax rates and the West Virginia Resident Income Tax Return form IT-140 (Long Form) or IT-140S (Short Form). Nonresident taxpayers who must file a West Virginia Personal Income Tax return use form IT-140NR-S if they are residents for income tax purposes of Kentucky, Maryland, Ohio, Pennsylvania or Virginia and if their taxable West Virginia income is received only as salary or wages. Residents of Pennsylvania or Virginia who have spent more than 183 days in West Virginia are residents of West Virginia for income tax purposes. Form IT-140NR-S is essentially a request for a refund only, and neither computation nor reference to a table is required. Nonresident taxpayers whose residence for income tax purposes is anywhere other than the five states named above file form IT-140NR/PY that, like form IT-140 for residents, requires computation and the use of tax rates.

West Virginia modifications that decrease federal adjusted gross income are as follows:

1. the first \$2,000 of benefits received under the West Virginia Public Employees' Retirement System or the West Virginia Teachers' Retirement System or military or federal civil service retirement benefits received to the extent included in federal taxable income;
2. all benefits received under the West Virginia Department of Public Safety Death, Disability, and Retirement Fund or retirement income received as pensions or annuities from any police or firefighter's retirement system after December 31, 1979;
3. income from any source received by persons who are sixty-five years of age or older or who are totally and permanently disabled or received by their surviving spouses, regardless of age, to the extent included in federal taxable income, if the deduction does not exceed \$8,000 for a single return or a maximum of \$8,000 per person for a joint return;
4. interest on United States obligations to the extent included in federal adjusted gross income;
5. interest or dividends on obligations or other securities of any United States authority, commission or agency, which is included in federal adjusted gross income but is exempt by federal law from State income taxation except for dividends from national bank stock, but including federal interest and dividends paid to shareholders of a regulated investment company under section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;
6. certain other elements of income received from partnership or fiduciary roles, principally those of the types described in items 4 and 5 above;
7. interest or dividend income from bonds issued by the State of West Virginia or its authorities, commissioners, or instrumentalities where the interest is

- subject to federal taxation but exempt by West Virginia law, from State taxation;
8. shareholder modifications related to distributive shares of ownership in an S corporation;
  9. State tax refunds included in federal adjusted gross income;
  10. the first \$2,000 of deposits made to medical savings accounts offset by any withdrawals made for purposes other than payment of medical expenses if the medical savings account qualifies under West Virginia law but not under federal law for such treatment;
  11. qualified payments made toward tuition pre-payment contracts to the extent included in federal adjusted gross income, and
  12. certain other income which this State is prohibited from taxing under federal law that are included in federal adjusted gross income, specifically Railroad Retirement benefits.

West Virginia modifications that increase federal adjusted gross income are as follows:

1. interest income on State and local obligations other than those of West Virginia and its political subdivisions;
2. interest or dividend income from obligations or securities of any United States authority, commission or agency that are, by federal law, exempt from federal income tax but not from State income tax;
3. interest on money borrowed to purchase obligations that earn income exempt from State income tax;
4. certain other elements of income received from partnership or fiduciary roles primarily those of the types described in items 1, 2 and 3 above, and
5. the amount of lump sum distributions for which the taxpayer has elected to be separately taxed for federal income tax purposes under Section 402(e) of the Internal Revenue Code.

West Virginia adjusted gross income (WV AGI) results when the applicable West Virginia increasing and/or decreasing modifications have been applied to federal adjusted gross income to determine West Virginia taxable income, the taxpayer takes a deduction from WV AGI based upon the number of personal exemptions he claimed on his federal return.

### Exemptions

Any individual taxpayer, whether resident or nonresident, is currently allowed \$2,000 for each exemption to which he is entitled for the taxable year for federal income tax purposes. A husband and wife who file a joint federal return but separate West Virginia returns may each claim only the exemptions to which they would have been entitled as individuals if they had filed separate federal returns. A surviving spouse is allowed one additional \$2,000 exemption for two taxable years beginning after the death of his or her spouse. Those claimed as dependents on another's return are entitled to a \$500 exemption. Estates and trusts are allowed only one \$600 exemption.

### Deductions

No subtractions are allowed from WV AGI for a standard deduction or for any federal itemized deductions.

### Exclusions

Beginning on July 1, 1996, taxpayers whose federal adjusted gross income is less than \$10,000 may exclude a portion of their earned income. For the 1996 tax year, all taxpayers with an annual adjusted gross income of \$10,000, except those who are married and filing separately, may claim an exclusion of up to \$5,000 if received after July 1, 1996. Married taxpayers filing separately may claim an exclusion of up to \$2,500. Beginning with the 1997 tax years, taxpayers who are married and filing separately and whose federal adjusted gross income is less than \$5,000 and their earned income after July 1, 1996 is below \$5,000 may claim an exclusion of up to \$5,000 while the maximum exclusion for all other taxpayers increases to \$10,000.

### Rates

Personal Income Tax rates differ with each taxable income category. Although the rates increase as taxable income increases, each rate is independent of every other rate. For example, for an individual taxpayer, an income of \$24,000 falls into the over \$10,000 - but not over \$25,000 category. However, only \$14,000, or the amount by which the income exceeds \$10,000 is taxed at the 4 percent rate. The tax liability for the first \$10,000 is \$300.

### Minimum Tax

West Virginia Personal Income Tax liability must be at least 25 percent of any federal minimum tax or alternative minimum tax for the taxable year. If tax liability determined from tax tables or rate schedules does not equal the 25 percent minimum, the West Virginia minimum tax will be the amount necessary to yield total tax equal to 25 percent of the federal minimum tax less the tax liability determined by tax tables or rate schedules.

### Credits Against Tax Liability

1. A credit against Personal Income Tax liability is granted to taxpayers in an amount equal to the West Virginia Personal Income Tax already withheld from their wages or salaries. Taxpayers must submit all appropriate withholding statements.
2. A credit against Personal Income Tax liability is granted to taxpayers for their payments of estimated taxes. Estimated taxes must be paid by each resident and nonresident taxpayer whose West Virginia adjusted gross income, except for any part of that income from which West Virginia income tax is withheld, can reasonably be expected to exceed \$400 plus the sum of the personal exemption allowances to which the taxpayer is entitled.

3. A credit may be granted to West Virginia residents because of income tax imposed by another state but not for taxes imposed by any city, township, borough or political subdivision of a state. Currently, credit is allowed for income tax imposed by thirty-six states and the District of Columbia. Taxpayers who are residents for income tax purposes of one of the other states or of Pennsylvania or Virginia may also become residents for tax purposes of West Virginia under certain conditions. The Department of Tax and Revenue cannot grant this credit unless the taxpayer's domicile is in West Virginia. In the cases of three of these states, Kentucky, Ohio, and Pennsylvania, credit is allowed only on taxable income from some source other than salaries or wages. No credit is currently allowed for income tax paid to the states of Virginia and Maryland. Taxpayers who believe they may qualify for the credit must contact the tax or revenue departments of the states involved to be sure of the exact conditions that apply to their cases. Taxpayers should be aware that the conditions under which this credit can be granted are complex and subject to change. The amount of credit that can be allowed is subject to the following limitations:
  - a. it cannot exceed the amount of tax actually payable to the other state on income that is also subject to West Virginia Personal Income Tax;
  - b. it cannot be a greater percentage of the taxpayer's West Virginia Tax than the percentage determined by dividing the portion of the taxpayer's West Virginia income that is subject to taxation in another state by the total amount of the taxpayer's West Virginia income, and
  - c. it cannot reduce West Virginia tax liability to an amount less than that which would have been due if the income that was subject to taxation by the other state had been excluded from the taxpayer's West Virginia income.
  
4. Some credit may be granted to nonresident West Virginia taxpayers when income they receive from West Virginia sources is also subject to income taxation by their state of residence, provided their state has entered into a written reciprocal agreement with this State. The taxpayer's state of residence must impose an income tax on its residents on the income they receive from West Virginia sources but exempt West Virginia residents from that state's own income tax. Currently, the tax laws of Kentucky, Ohio, Maryland, Pennsylvania and Virginia meet the conditions for applying this credit. The Department of Tax and Revenue cannot grant this credit unless the taxpayer's domicile is in West Virginia. Residents of Kentucky, Ohio or Pennsylvania can receive credit only if the income they received from West Virginia sources is in the form of salaries or wages. Taxpayers who are residents for income tax purposes of one of the other states of Pennsylvania or Virginia may become residents for tax purposes of both West Virginia and their home states under certain conditions. Taxpayers who believe they may qualify for this credit must contact the tax or revenue departments of the states involved to be sure of the exact conditions that apply to their cases. The taxpayer should be aware that the conditions under which this credit can be granted are complex and subject to the following limitations:
  - a. it cannot exceed the amount of tax actually payable;
  - b. it cannot exceed a percentage of the income tax imposed by the nonresident's home state that is equal to the percentage that the nonresident's West Virginia income that is subject to his home state's income tax is of the total amount of

- the nonresident's income that is subject to income taxation by his home state, and
- c. it cannot exceed a percentage of the income tax that would be due to West Virginia without the credit that is equal to the percentage that the portion of the nonresident's income that is subject to income taxation by his home state is of the total amount of the nonresident's West Virginia income.

Several additional tax credits may be available to some taxpayers. These include the Business Investment and Jobs Expansion Credit, the Historic Rehabilitated Buildings Credit, the West Virginia Capital Company Credit, the Military Employment Incentive Credit, the Colin Anderson Employment Credit, the Neighborhood Investment Credit, the Environmental Agricultural Equipment Credit, the Alternative-Fuel Motor Vehicles Credit, and the Consumer-Ready Wood Products Manufacturing Employment Credit. Additional information regarding such credits may be found in the Tax Credits section.

#### West Virginia Children's Trust Fund Contribution Program

Individual taxpayers may designate \$2, \$5, \$10, or more from their tax refund to be used for funding the children's trust fund for the prevention of child abuse and neglect.

#### Composite Returns

Nonresident partners, S corporation shareholders and trust beneficiaries who have West Virginia income may elect to file a composite nonresident income tax return in lieu of filing separate nonresident returns. A composite return processing fee of \$50 will be charged. When determining the amount of tax due on a composite nonresident return, no exemptions may be used, and the tax due must be computed at the rate of 6.5 percent of the West Virginia taxable income for each individual included on the composite return. The filing of composite nonresident returns does not prevent a nonresident from also filing a separate nonresident personal income tax return for that taxable year. A separate return is required if the nonresident has income from any other West Virginia source.

Individuals must consent to be included on all composite returns filed. A nonresident also filing a separate return may take a credit for the share of the tax remitted with the composite return.

#### Residency for Personal Income Tax Purposes

Although the terms "residence", "domicile" and "abode" are somewhat interchangeable in common use, their meanings within West Virginia tax law are distinct and special. An individual may be a resident of West Virginia for income tax purposes even though he would not be deemed a resident for other purposes. Residency for tax purposes is defined in terms of abode (a place where the taxpayer stays or stops off) and domicile (the taxpayer's permanent home to which he intends to return whenever he is absent). The taxpayer may have many abodes but only one domicile.

Abodes, which may be either owned or rented, are those dwelling places the taxpayer maintains during a temporary stay for the accomplishment of some particular project that has a definite and foreseeable end. Permanent abodes are dwelling places the taxpayer maintains

permanently or indefinitely, except for dwelling places such as cottages that are suitable and maintained only for vacation.

The taxpayer's domicile is fixed until he moves to a new location with the honest intention of making it his permanent home. The single fact that he may register to vote in a new location is not proof that he has actually changed his domicile since he may have intended only to avoid taxation in the jurisdiction of his old domicile. When the taxpayer maintains two or more homes, only one of them can be his domicile. The length of time spent at each home is important but not conclusive in determining each home is important but not conclusive in determining which home is his domicile.

For Personal Income Tax purposes, a resident is a person who

1. has his domicile in West Virginia, even though he maintains a permanent place of abode outside the State and does not maintain a permanent place of abode in West Virginia if he spends more than thirty (not necessarily consecutive) days of the taxable year here, or
2. has his domicile outside West Virginia but maintains a permanent place of abode in inside West Virginia and spends more than 183 (not necessarily consecutive) days of the taxable year here unless the person involved is a member of the United States military forces.

#### Military Taxpayers

If the taxpayer is a member of the United States military forces and his domicile was in West Virginia at the time he entered military service, then assignment to duty outside the State does not change his West Virginia domicile. Such a taxpayer must file his West Virginia return and pay any tax he owes in the same manner as any resident individual unless he can meet both conditions:

1. he had no permanent place of abode in West Virginia during the taxable year, and
2. he did not spend more than thirty not necessarily consecutive days in West Virginia during the taxable year.

If the military taxpayer met both of the conditions listed above but had income from some West Virginia sources, then he may be required to file a nonresident Personal Income Tax return depending on the nature of the income. Members of the United States military forces whose domicile is outside West Virginia are not taxed by this State on their military compensation, even though they may be stationed in West Virginia and maintain a permanent place of abode in the State.

#### Change of Residence in General

A taxpayer who changes his/her residence either from West Virginia to another state or from another state to West Virginia during the tax year is required to file a nonresident/part-year resident return. The taxpayer who changes from being a resident to being a nonresident must include in the nonresident/part-year tax return he files for the period before he moves all items of income, gain or loss that have accrued to him (that is, for the same transaction, the items that he has received plus all items that are owed to him) up to the time of his change of residence. This means, for example, that

if a taxpayer sold some property while he was still a resident and agreed to accept payment for it on an installment basis, he must report his income on his nonresident/part-year resident income tax return as though he had already received all the payments, not just the ones he received before he moved.

### West Virginia Income of Part-Year Residents

West Virginia source income of part-year residents is the sum of the following:

1. federal adjusted gross income for the period of residency computed as if his taxable year for federal income tax purposes was limited to the period of residency;
2. West Virginia source income for the period of nonresidence, and
3. special accruals.

Special accruals are determined by the following rules:

1. When an individual changes from resident to nonresident, the individual must include in the income on the nonresident/part-year return any loss or deduction accrued before the change of residency that were not included in the individual's federal adjusted gross income for the resident period or in the individual's West Virginia source income for the period of nonresidence.
2. If the individual changes from nonresident to resident status, the individual must include in the income on the nonresident/part-year resident return any items of income, gain, loss or deduction accrued before the change, other than items derived from or connected with West Virginia sources.
3. No item of income, gain, loss or deduction accrued under this section may be considered in determining any future West Virginia adjusted gross income or West Virginia source income.
4. The above-listed accruals are not required if the individual filed a bond or other acceptable security, conditioned on inclusion of amounts accruable in West Virginia adjusted gross income or West Virginia source income as if residency had not changed.

### West Virginia Income of Nonresidents

Only those items of income, gain, income and deduction derived from West Virginia sources are included as West Virginia income.

### West Virginia Income of Nonresident Estates and Trusts

Only those items of income, gain, loss and deduction derived from West Virginia sources that would be includible in the federal adjusted gross income of an individual taxpayer must be included in the income of an estate or trust. This includes all items of income from another estate of which the first estate or trust is a beneficiary.

The State Tax Commissioner may authorize alternate methods of determining representative shares of beneficiaries. A written application to use alternate methods must be filed on or before the return due date without regard to any extension.

Federal taxable income for an estate or trust is determined as if the estate or trust was an individual. Also, federal taxable income is increased by the amount of the includible gains, reduced by properly allocable deductions, upon which tax is imposed under Section 644 of the Internal Revenue Code.

### Computation of Tax on Income of Nonresidents and Part-Year Residents

Personal Income Tax due on income derived from sources in West Virginia by a nonresident individual, estate or trust or part-year resident individual must be calculated using the following steps:

1. the tentative tax must be calculated as if the taxpayer was a West Virginia resident for the entire year;
2. the tax liability is equal to the following:

$$\text{Tentative Tax} \times \frac{\text{West Virginia Source Income}}{\text{Federal Adjusted Gross Income}}$$

### Nonresident Withholding

Tax must be withheld from nonresidents on rents and royalties from real and tangible personal properties located in West Virginia. The list of taxpayers subject to nonresident withholding has been expanded to include estates. Income must be derived from or connected with West Virginia sources to be subject to the nonresident withholding requirements. The withholding rate is 4 percent of the taxable income that may be taxed in West Virginia. Withholding of taxes for nonresidents is not required in the following cases:

1. on distributions to a person, other than a corporation who is exempt from paying federal income tax on West Virginia source income;
2. on distributions to a corporation that, because of its purpose or activities, is exempt from federal income tax on its West Virginia source income;
3. on distributions when compliance would cause undue hardship on the pass-through entity and the State Tax Commissioner has approved in writing the entity's petition for exemption from withholding, and
4. on distributions by non-partnership ventures

An unincorporated organization that has elected under Section 761 of the Internal Revenue Code not to be treated as a partnership must file information returns. These information returns must include the fixed or determinable gains, profits and income. These returns also must list the names, addresses and taxpayer identification numbers of persons receiving West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes. A copy of the information statements must be filed with the pass-through entity's tax return. This information statement must be furnished to nonresident distributee.

A nonresident distributee can file with the pass-through entity an agreement to do the following:

1. timely file returns and timely pay all income taxes imposed on the effectively connected taxable income, and
2. be subject to personal jurisdiction in West Virginia for purposes of collection of unpaid income tax and related interest, penalties, and additions to tax owed by the nonresident distributee.

A nonresident distributee electing to execute such an agreement must file the agreement with each pass-through entity for which the election is made. The filing must occur on or before the last day of the pass-through entity's first tax year for which the agreement applies. The entity must file a copy of the agreement with the State Tax Commissioner. The agreement may be revoked by the distributee according to regulations promulgated by the State Tax Commissioner. Upon receipt of the properly executed agreement, the pass-through entity may no longer withhold tax until notified otherwise by the nonresident distributee or the State Tax Commissioner in writing.

The pass-through entity must file a copy of all distributee agreements received with its annual information return. If the entity fails to timely file the agreements with the State Tax Commissioner, the entity must instead withhold tax from the distributees. The entity may then recover the amount of the payment from the nonresident distributee on whose behalf payment was made.

### Fiduciary Tax Returns

While estates and trusts are taxed under the Personal Income Tax statute, their tax liability is calculated on the Fiduciary Income Tax return, not a Personal Income Tax return. Unlike the tax on individuals, federal taxable income is the starting point for the calculation of the West Virginia Fiduciary Income Tax for estates and trusts. West Virginia taxable income is derived after specific increasing or decreasing modifications are made to federal taxable income. The rate schedule for both resident and nonresident estates and trusts is the same as Personal Income Tax rates for all taxpayers, except married taxpayers filing separate returns.

For simplicity, estates have the same \$600 exemption allowance as on the federal return. Since West Virginia's treatment of estates and trusts are similar, the same \$600 exemption is allowed for trusts.

Although the State does not permit federal itemized deductions for Personal Income Tax, West Virginia allows the federal deductions claimed prior to attainment of taxable income for Fiduciary Income Tax purposes. Current calculations of State tax liability for fiduciaries begin with federal taxable income, not federal adjusted gross income.

## **ESTATE TAX**

The West Virginia Estate Tax is a transfer tax imposed on the estates of certain decedents who are subject to the federal Estate Tax. This tax is applicable to the estates of both resident decedents and to the estates of nonresident decedents in cases of nonresident personal property located in West Virginia. The West Virginia Estate Tax also applies to the estates of decedents who

are residents of West Virginia but not citizens of the United States and who die owning real property, tangible personal property or intangible personal property with West Virginia situs or presence.

The personal representative of an estate must file a West Virginia Estate Tax return whenever required by federal law to file the federal Estate Tax return. Generally, the filing requirement is an estate with a gross value exceeding \$600,000.

The amount of West Virginia Estate Tax payable is equal to the credit for state death taxes computed for federal estate tax purposes. For estates of nonresident decedents the tax is apportioned based on the value of the West Virginia estate as it relates to the total estate. Apportionment is also necessary where the estate of a resident decedent consists of real property or tangible personal property with actual situs outside of West Virginia.

The West Virginia Estate Tax is required to be paid within nine months of the decedent's death. Any tax not paid within nine months will become subject to interest and additions to tax.

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PERSONAL TAXES

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**PERSONAL INCOME TAX COLLECTIONS**

Fiscal Year	Net Revenue
1986-1987 .....	\$454,992,491
1987-1988 .....	394,183,876
1988-1989 .....	467,419,856
1989-1990 .....	516,862,534
1990-1991 .....	576,340,030
1991-1992 .....	612,508,664
1992-1993 .....	621,175,512
1993-1994 .....	669,694,241
1994-1995 .....	709,923,304
1995-1996 .....	750,889,201
1996-1997 .....	786,190,006

**ESTATE TAX COLLECTIONS<sup>1</sup>**

Fiscal Year	Net Revenue
1986-1987 .....	\$6,741,739
1987-1988 .....	6,457,514
1988-1989 .....	4,955,397
1989-1990 .....	6,928,068
1990-1991 .....	7,547,540
1991-1992 .....	7,417,926
1992-1993 .....	27,289,289
1993-1994 .....	9,320,115
1994-1995 .....	8,512,572
1995-1996 .....	10,266,479
1996-1997 .....	17,366,529

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<sup>1</sup> The Inheritance Tax was imposed on all estates of decedents dying before July 1, 1985 and was due eleven months after the death of the decedent. Estates of decedents dying after June 30, 1985 are subject to the Estate Tax and payment of the tax is not due for nine months from the date of death.