

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3079**

BY DELEGATES ZUKOFF, STORCH AND PYLES

[Introduced February 12, 2019; Referred  
to the Committee on Energy then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §11-21-71c, relating to withholding tax on income from natural resources  
 3 royalty payments; defining terms; providing exceptions to the withholding tax requirement;  
 4 requiring annual withholding statements and filing requirements; requiring electronic filing  
 5 under specified circumstances; creating penalties; providing for rulemaking; and providing  
 6 internal 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.**

1 (a) Withholding tax on income from natural resources royalty payments. --

2 (1) Every lessee of West Virginia real estate who makes a natural resources royalty  
 3 payment in the course of a trade or business to a lessor shall withhold West Virginia personal  
 4 income tax on natural resources royalty payments to the lessor.

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

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

15 (b) Amounts collected under subsection (a) of this section and paid over to the Tax  
 16 Commissioner are considered to have been paid to the Tax Commissioner on behalf of the lessor  
 17 from whom the amounts were withheld. The lessor shall be credited with having paid the amounts

18 for the taxable years in which natural resources royalty payment that is the subject of the tax  
19 occurred against any tax owed by the lessor to the State of West Virginia on income resulting  
20 from the natural resources royalty payment and is entitled to a refund from the Tax Commissioner  
21 of any amount in excess of the amount owed.

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

23 (1) "Lessor" includes resident and nonresident individuals, estates or trusts.

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

30 (3) "Natural resource" means, all forms of minerals including, but not limited to, rock, stone,  
31 limestone, coal, shale, gravel, sand, clay, petroleum, natural gas, oil, natural gas liquids, metal  
32 ores and rare earth metals that are contained in, under or on the soils or waters of this state, and  
33 timber and forest products and any other natural resource the production of which is taxable under  
34 §11-13A-1 et seq. of this code.

35 (d) Annual withholding statements --

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

41 (2) Every lessee required to deduct and withhold tax under this section shall file a  
42 withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner  
43 the taxes required to be deducted and withheld. The due dates for returns and payments may, at

44 the discretion of the Tax Commissioner, be established by the Tax Commissioner to match as  
45 closely as practicable the due dates in effect for employer's withholding under §11-21-74 of this  
46 code: *Provided*, That not later than January 31, 2021, and January 31 of each year after that,  
47 lessees shall submit to the Tax Commissioner the annual reconciliation of West Virginia income  
48 tax withheld, together with state copies of all withholding tax statements reflecting West Virginia  
49 tax withholding, including, but not limited to, 1099s, furnished to each lessor for income from  
50 natural resources royalty payments from the preceding calendar year, notwithstanding the fact  
51 that the lessee may have a calendar tax year ending on December 31 or a fiscal tax year ending  
52 on a date other than December 31: *Provided, however*, That, the Tax Commissioner may by rule  
53 prescribe one or more different due dates for the annual reconciliation, and withholding  
54 statements, based upon reporting and accounting practices of natural resources producers or  
55 particular segments of the natural resourced production industry, as may be appropriate.  
56 Notwithstanding the provisions of this section, where the average quarterly amount deducted and  
57 withheld by any lessee is less than \$150 and the aggregate for the calendar year can reasonably  
58 be expected to be less than \$600, the Tax Commissioner may by rule permit a lessee to file an  
59 annual return and pay over to the Tax Commissioner the taxes deducted and withheld on a due  
60 date prescribed by the Tax Commissioner.

61 (A) Deposit in trust for Tax Commissioner. — Whenever any lessee fails to collect,  
62 truthfully account for, or pay over the tax, or to make returns of the tax as required in this section,  
63 the Tax Commissioner may serve a notice requiring the lessee to collect the taxes which become  
64 collectible after service of the notice, to deposit the taxes in a bank approved by the Tax  
65 Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to  
66 keep the amount of the tax in the separate account until payment over to the Tax Commissioner.  
67 The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.  
68 Failure of a lessee or other person responsible for compliance with any order issued by the Tax  
69 Commissioner under this section is subject to the civil and criminal penalties and liabilities

70 prescribed by this chapter for failure to withhold tax or failure to remit withheld tax, or both.

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

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

82 (e) Rulemaking. -- The Tax Commissioner may propose legislative, procedural,  
83 interpretive or emergency rules or any combination thereof, for promulgation in accordance with  
84 §29A-3-1, et seq. of this code for the administration of the provisions of this section.

85 (f) Effective date. -- The provisions of this section apply to all taxable years beginning after  
86 December 31, 2019.

NOTE: The purpose of this bill is to require lessees of West Virginia real estate who make natural resources royalty payments in the course of a trade or business to a lessor withhold West Virginia personal income tax on natural resources royalty payments to such lessor.

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