

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 265

FISCAL
NOTE

BY SENATORS WELD, LINDSAY, NELSON, AND MARONEY

[Introduced January 13, 2022; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-21-3 of the Code of West Virginia, 1931, as amended, relating
2 to the personal income tax by exempting certain irrevocable trusts from the personal
3 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
3 every individual, estate, and trust.

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

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

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

17 (e) Irrevocable trusts. -- The income earned on an irrevocable trust created under the laws
18 of the State of West Virginia and administered by any West Virginia state chartered banking
19 institution or a federally chartered banking institution with its corporate headquarters located in
20 this state shall be exempt from tax under this article.

- 21 ~~(e)~~ (f) Cross references. — For definitions of West Virginia taxable income of:
- 22 (1) Resident individual, see §11-21-11 of this code.
- 23 (2) Resident estate or trust, see §11-21-18 of this code.
- 24 (3) Nonresident individual, see §11-21-30 of this code.
- 25 (4) Nonresident estate or trust, see §11-21-38 of this code.
- 26 ~~(f)~~ (g) Effective date. — This section as amended in 2019 shall apply to taxable years
- 27 beginning on and after January 1, 2018: Provided, That the provisions of this section, as amended
- 28 during the 2022 regular legislative session, shall apply to taxable years beginning on and after
- 29 January 1, 2023.

NOTE: The purpose of this bill is to exempt certain irrevocable trusts created and administered in the State of West Virginia from the state income tax.

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