

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 60

FISCAL
NOTE

By Senator Trump

[Introduced January 11, 2023; referred
to the Committee on Agriculture and Natural Resources;
and then to the Committee on 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 tax on income of nonresidents for natural resources
 3 royalty payments received from lessees; providing legislative findings; defining terms;
 4 providing for withholding of estimated tax liabilities from natural resources royalty
 5 payments for nonresidents by lessees; providing exceptions to the tax withholding
 6 requirements under certain circumstances; providing that withheld amounts be paid by
 7 lessees to the Tax Commissioner on behalf of the nonresidents; providing for refunds to
 8 nonresidents for overpayment; requiring annual withholding statements, reconciliation,
 9 and filing requirements; requiring electronic filing under specified circumstances; providing
 10 for criminal and civil penalties in certain circumstances for noncompliance; providing for
 11 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.

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

7 (b) Withholding tax on income from nonresident natural resources royalty payments. --
 8 (1) Every lessee of West Virginia real estate who makes a natural resources royalty
 9 payment in the course of a trade or business to a lessor who does not reside in the State of West
 10 Virginia shall withhold West Virginia personal income tax on natural resources royalty payments to
 11 that lessor.

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

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

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

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

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

33 (2) "Natural resource" means all forms of minerals including, but not limited to, rock, stone,
34 limestone, coal, shale, gravel, sand, clay, petroleum, natural gas, oil, natural gas liquids, metal
35 ores and rare earth metals that are contained in, under or on the soils or waters of this state, and
36 timber and forest products and any other natural resource.

37 (3) "Natural resources royalty payment" means a payment reserved by the grantor of a

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

44 (e) Annual withholding statements. --

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

50 (2) Every lessee required to withhold tax under this section shall file a withholding return as
51 prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to
52 be deducted and withheld. The due dates for returns and payments may, at the discretion of the
53 Tax Commissioner, be established by the commissioner to match as closely as practicable the due
54 dates in effect for employer's withholding under §11-21-74 of this code: *Provided*, That not later
55 than January 31, 2025, and January 31 of each year thereafter, lessees shall submit to the Tax
56 Commissioner the annual reconciliation of West Virginia income tax withheld, together with state
57 copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not
58 limited to, 1099s, furnished to each lessor for income from natural resources royalty payments
59 from the preceding calendar year, notwithstanding the fact that the lessee may have a calendar tax
60 year ending on December 31 or a fiscal tax year ending on a date other than December 31:
61 *Provided, however*, That the Tax Commissioner may by rule prescribe one or more different due
62 dates for the annual reconciliation, and withholding statements, based upon reporting and
63 accounting practices of natural resources producers or particular segments of the natural

64 resourced production industry, as may be appropriate. Notwithstanding the provisions of this
65 section, where the average quarterly amount deducted and withheld by any lessee is less than
66 \$150 and the aggregate for the calendar year can reasonably be expected to be less than \$600,
67 the Tax Commissioner may by rule permit a lessee to file an annual return and pay over to the
68 commissioner the taxes deducted and withheld on a due date prescribed by the commissioner.

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

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

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

90 (f) Rule-making. -- The Tax Commissioner may propose legislative, procedural,
91 interpretive or emergency rules or any combination thereof, for promulgation in accordance with
92 §29A-3-1 et seq. of this code to implement this section.

93 (g) Effective date. – The provisions of this section apply to all taxable years beginning after
94 December 31, 2024.