

# WEST VIRGINIA LEGISLATURE

FISCAL  
NOTE

## 2024 REGULAR SESSION

Introduced

# House Bill 4989

By Delegate Vance

[Introduced January 22, 2024; Referred to the  
Committee on Finance]

1 A BILL to amend and reenact §11-21-32 of the Code of West Virginia, 1931, as amended, relating  
2 to imposing a 1.5% tax on the income of nonresidents.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-32. West Virginia source income of nonresident individual.**

1 (a) *General.* -- The West Virginia source income of a nonresident individual shall be the  
2 sum of the net amount of income, gain, loss and deduction entering into his or her federal adjusted  
3 gross income, as defined in the laws of the United States and section nine of this article, for the  
4 taxable year, derived from or connected with West Virginia sources, including:

5 (1) His or her distributive share of partnership income, gain, loss and deduction,  
6 determined under section thirty-seven; and

7 (2) His or her pro rata share of S corporation income, loss and deduction, determined  
8 under section thirty-seven of this article, increased by reductions for taxes described in  
9 paragraphs (2) and (3), subsection (f), section 1366 of the Internal Revenue Code; and

10 (3) His or her share of estate or trust income, gain, loss and deduction, determined under  
11 section thirty-nine of this article.

12 (b) *Income and deductions from West Virginia sources.*

13 (1) Items of income, gain, loss and deduction derived from or connected with West Virginia  
14 sources shall be those items attributable to:

15 (A) The ownership of any interest in real or tangible personal property in this state; or

16 (B) A business, trade, profession or occupation carried on in this state; or

17 (C) In the case of a shareholder of an S corporation, the ownership of shares issued by  
18 such corporation, to the extent determined under section thirty-seven; or

19 (D) Prizes awarded under article twenty-two, chapter twenty-nine of this code by the West  
20 Virginia State Lottery Commission.

21 (2) Income from intangible personal property, including annuities, dividends, interest, and

22 gains from the disposition of intangible personal property, shall constitute income derived from  
23 West Virginia sources only to the extent that such income is from property employed in a business,  
24 trade, profession or occupation carried on in this state.

25 (3) Deductions with respect to capital losses and net operating losses shall be based solely  
26 on income, gain, loss and deduction derived from or connected with West Virginia sources, under  
27 regulations of the Tax Commissioner, but otherwise shall be determined in the same manner as  
28 the corresponding federal deductions.

29 (4) The deduction allowed by section 215 of the Internal Revenue Code, relating to  
30 alimony, shall not constitute a deduction derived from West Virginia sources.

31 (c) *Income and deductions partly from West Virginia sources.* -- If a business, trade,  
32 profession or occupation is carried on partly within and partly without this state, as determined  
33 under regulations of the Tax Commissioner, the items of income, gain, loss and deduction derived  
34 from or connected with West Virginia sources shall be determined by apportionment and allocation  
35 under such regulations.

36 (d) *Purchase and sale for own account.* -- A nonresident, other than a dealer holding  
37 property for sale to customers in the ordinary course of his or her trade or business, shall not be  
38 deemed to carry on a business, trade, profession or occupation in this state solely by reason of the  
39 purchase and sale of property for his or her own account.

40 (e) *Husband and wife.* -- If a husband and wife determine their federal income tax on a joint  
41 return but determine their West Virginia income taxes separately, they shall determine their West  
42 Virginia source incomes separately as if their federal adjusted gross incomes had been  
43 determined separately.

44 (f) *Effective date.* -- This section as amended and reenacted in the year 1992 shall apply to  
45 taxable years beginning after December 31, 1991. As to prior taxable years, the provisions of this  
46 section and of section thirty-one of this article, as then in effect, are fully and completely preserved.

47 (g) Effective as of tax year 2025, nonresidents of this state shall pay an additional 1.5% tax

48 rate in addition to the taxes owed under this section.

NOTE: The purpose of this bill is to impose an additional 1.5% tax rate on nonresidents.

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