State Tax Department
of West Virginia
Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

FILED

1985 MAY 15 AM 9:44

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

May 15, 1985

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Hechler:

On April 13, 1985, the West Virginia Legislature passed Senate Bill 399 and made it effective from passage.

This bill authorizes the State Tax Commissioner to amend and promulgate the legislative rules filed in the State Register on September 28, 1984, relating to estimated personal income tax. We have made the required amendments.

With this letter we submit for filing in the State Register the legislative rule promulgated in accordance with W. Va. Code §§ 64-2-11(10)(5)(a) [1985] and 29A-3-13 [1983]. As provided in W. Va. Code § 29A-3-13(b) [1983], this legislative rule takes effect on June 14, 1985, thirty (30) days after its filing in the State Register.

Very truly yours,

Michael E. Caryl
State Tax Commissioner

MEC/jms
Attachment

SENATE BILL NO. 393

(By Mr. R. Williams

)

[Introduced March 6, 1985;

referred to the Committee on Finance; then to the Committee

on the Judiciary]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven (ten) (five), relating to authorizing the state tax commissioner to promulgate legislative rules relating to estimated personal income tax.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven (ten) (five), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-11(10)(5). State tax commissioner.

The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four relating to the state tax commissioner (estimated personal income tax) are authorized.

NOTE: The purpose of this bill is to authorize the state tax commissioner to promulgate legislative rules relating to estimated personal income tax.

This section is new; therefore, strike-throughs and underscoring have been omitted.

1561

H. B. 1640

(By Delegate Casey)

(Introduced March6, 1985; referred to the Committee on Finance with the direction that it later be referred to the Committee on the Judiciary.)

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven (ten) (five), relating to authorizing the state tax commissioner to promulgate legislative rules relating to estimated personal income tax.

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The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four relating to the state tax commissioner

1640

(estimated personal income tax) are authorized.

NOTE: The purpose of this bill is to authorize the state tax commissioner to promulgate legislative rules relating to estimated personal income tax.

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FILED

1985 MAY 15 AM 9 44

OFFICE OF [illegible]
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-10
Series XXI

Subject: Personal Income Tax -- Rules for filing declarations of estimated personal income tax, making installment payments of such tax, imposition of interest and additions to tax for noncompliance and providing "safety zones" for when interest and additions will not be imposed.

Filed: May 15, 1985

Title 110
Legislative Rule

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

STATE TAX DEPARTMENT

~~LEGISLATIVE~~

~~Chapter 11-1)~~
Series ~~XXI~~ 21
~~(1964)~~

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-29-82
Administrative Law Division

Subject: Personal Income Tax

Section 1. General.

1.01. Type of Regulations -- These regulations are "legislative rules" as defined in W. Va. Code §29A-1-2(d) (1982).

1.02. Scope -- These regulations are an explanation and clarification of the W. Va. Income Tax Act (W. Va. Code Ch. 11, Art. 21, Secs. 3-76).

1.03. Authority -- These regulations are issued under the authority of W. Va. Code Ch. 11, Art. 21. W. Va. Code 11-21

1.04. Filing date -- These regulations were promulgated in 1964 and filed with the office of the Secretary of State in 1964 and refiled in the aforesaid office on December 29, 1982 in compliance with W. Va. Code §29A-2-5. May 15, 1985

1.05. Effective date -- ~~These regulations became effective in 1964~~ June 14, 1985

1.06. Citation -- These regulations may be cited as: W. Va. Leg. Reg. (Personal Income Tax) 11-10, Series XXI, §__________, page________ (1964).

SECTION 2 RESERVED FOR FUTURE USE.

Section 3. Persons subject to tax.

3.01. Imposition of Tax. The West Virginia Personal Income Tax Act imposes a personal income tax on the West Virginia taxable income of every individual, estate, and trust for each taxable year ending on and after January 1, 1961. The tax imposed for taxable periods of less than a year shall be one-twelfth of the tax for an entire year multiplied by the number of months elapsed from January 1, 1961, until the end of such taxable period. (For rates, see sections 4 and 4A).

3.02. Partners and partnerships. A partnership is not subject to the personal income tax, although individuals carrying on business as partners are liable for tax in their separate capacities. (See section 58.02 as to filing of returns by partnerships).

3.03. Associations taxable as corporations. A corporation is not a taxable entity within the purview of the West Virginia Personal Income Tax Act. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes is not subject to the personal income tax.

3.04. Exempt trust and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax is exempt from the personal income tax, regardless of whether such organization is subject to federal income tax on unrelated business taxable income.

3.05. Cross references.

(a) For definitions of West Virginia taxable income of resident individuals, see section 11 of these regulations.

(b) For definition of the West Virginia taxable income of resident estates and trusts, see section 18 of these regulations.

(c) For definition of the West Virginia taxable income of nonresident individuals, see section 31 of these regulations.

(d) For definition of the West Virginia taxable income of nonresident estates and trusts, see section 38 of these regulations.

Section 4. Rate of Tax. Taxable years ending prior to January 1, 1963.

4.01. Rate of tax on individuals. The personal income tax imposed by the West Virginia Personal Income Tax Act (see section 3(a)) on the West Virginia taxable income of every individual not a head of a household, and upon every estate and trust shall be six per centum of the federal income tax which would be imposed on an identical amount of federal taxable income under subsection (a) of section 1 of the United States Internal Revenue Code of 1954.

4.02. Rate of tax on heads of households. The personal income tax imposed by the West Virginia Personal Income Tax Act on the West Virginia taxable income of every individual who is a head of a household (see section 9) shall be six per centum of the federal income tax which would be imposed upon an identical amount of federal taxable income under subsection (b) of section 1 of the United States Internal Revenue Code of 1954.

4.03. Rates of tax in case of joint return or return of surviving spouse. The personal income tax imposed by the West Virginia Personal Income Tax Act (see section 3(a)) on the West Virginia taxable income of a husband and wife filing a joint return shall be six per centum of twice the tax which would be imposed upon half the identical amount of federal taxable income under subsection (a) of section 1 of the United States Internal Revenue Code of 1954. The return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse shall be treated as a joint return of a husband and wife.

4.04. Effective date. The personal income tax rate prescribed by the preceding subsections of this section shall be given effect only in determining the rate of tax imposed for taxable years or portions thereof ending prior to January 1, 1963.

Section 4A. Rate of Tax. Taxable years beginning on or after January 1, 1963.

4A.01. Rate of tax on individuals and heads of household.

(a) The personal income tax imposed by the West Virginia Personal Income Tax Act (see section 3(a)) on the West Virginia taxable income of every individual, every individual who is a head of a household in the determination of his federal income tax for the taxable year, and every estate and trust shall be determined in accordance with the following table:

Schedule I - Individuals and Heads of Households

Not over $2,000 . . . . 1.2% of the taxable income

Over--	But not over--		of excess over--
$ 2,000	$ 4,000	$ 24.00, plus 1.3%	$ 2,000
$ 4,000	$ 6,000	$ 50.00, plus 1.6%	$ 4,000
$ 6,000	$ 8,000	$ 82.00, plus 1.8%	$ 6,000
$ 8,000	$ 10,000	$ 118.00, plus 2.0%	$ 8,000
$ 10,000	$ 12,000	$ 158.00, plus 2.3%	$ 10,000
$ 12,000	$ 14,000	$ 204.00, plus 2.6%	$ 12,000
$ 14,000	$ 16,000	$ 256.00, plus 2.8%	$ 14,000
$ 16,000	$ 18,000	$ 312.00, plus 3.0%	$ 16,000
$ 18,000	$ 20,000	$ 372.00, plus 3.1%	$ 18,000
$ 20,000	$ 22,000	$ 434.00, plus 3.4%	$ 20,000
$ 22,000	$ 26,000	$ 502.00, plus 3.5%	$ 22,000
$ 26,000	$ 32,000	$ 642.00, plus 3.7%	$ 26,000
$ 32,000	$ 38,000	$ 864.00, plus 3.9%	$ 32,000
$ 38,000	$ 44,000	$1,098.00, plus 4.1%	$ 38,000
$ 44,000	$ 50,000	$1,344.00, plus 4.3%	$ 44,000
$ 50,000	$ 60,000	$1,602.00, plus 4.5%	$ 50,000
$ 60,000	$ 70,000	$2,052.00, plus 4.7%	$ 60,000
$ 70,000	$ 80,000	$2,522.00, plus 4.9%	$ 70,000
$ 80,000	$ 90,000	$3,012.00, plus 5.0%	$ 80,000
$ 90,000	$100,000	$3,512.00, plus 5.2%	$ 90,000
$100,000	$150,000	$4,032.00, plus 5.3%	$100,000
$150,000	$200,000	$6,682.00, plus 5.4%	$150,000
$200,000		$9,382.00, plus 5.5%	$200,000

(b) Rate of tax in case of joint return or return of surviving spouse. The personal income tax imposed by the West Virginia Personal Income Tax Act (see section 3(a)) on the West Virginia taxable income of a husband and wife filing a joint return for the taxable year and the return of an individual entitled to file a federal income tax return for the taxable year, as a surviving spouse, shall be determined in accordance with the following table:

Schedule II - Joint Return or Filing as the Surviving Spouse

Not over $4,000 . . . . 1.2% of the taxable income

Over--		But not over--			of excess over--
$ 4,000	-	$ 8,000	$ 48.00, plus 1.3%	-	$ 4,000
$ 8,000	-	$ 12,000	$ 100.00, plus 1.6%	-	$ 8,000
$ 12,000	-	$ 16,000	$ 164.00, plus 1.8%	-	$ 12,000
$ 16,000	-	$ 20,000	$ 236.00, plus 2.0%	-	$ 16,000
$ 20,000	-	$ 24,000	$ 316.00, plus 2.3%	-	$ 20,000
$ 24,000	-	$ 28,000	$ 408.00, plus 2.6%	-	$ 24,000
$ 28,000	-	$ 32,000	$ 512.00, plus 2.8%	-	$ 28,000
$ 32,000	-	$ 36,000	$ 624.00, plus 3.0%	-	$ 32,000
$ 36,000	-	$ 40,000	$ 744.00, plus 3.1%	-	$ 36,000
$ 40,000	-	$ 44,000	$ 868.00, plus 3.4%	-	$ 40,000
$ 44,000	-	$ 52,000	$ 1,004.00, plus 3.5%	-	$ 44,000
$ 52,000	-	$ 64,000	$ 1,284.00, plus 3.7%	-	$ 52,000
$ 64,000	-	$ 76,000	$ 1,728.00, plus 3.9%	-	$ 64,000
$ 76,000	-	$ 88,000	$ 2,196.00, plus 4.1%	-	$ 76,000
$ 88,000	-	$100,000	$ 2,688.00, plus 4.3%	-	$ 88,000
$100,000	-	$120,000	$ 3,204.00, plus 4.5%	-	$100,000
$120,000	-	$140,000	$ 4,104.00, plus 4.7%	-	$120,000
$140,000	-	$160,000	$ 5,044.00, plus 4.9%	-	$140,000
$160,000	-	$180,000	$ 6,024.00, plus 5.0%	-	$160,000
$180,000	-	$200,000	$ 7,024.00, plus 5.2%	-	$180,000
$200,000	-	$300,000	$ 8,064.00, plus 5.3%	-	$200,000
$300,000	-	$400,000	$13,364.00, plus 5.4%	-	$300,000
$400,000			$18,764.00, plus 5.5%	-	$400,000

(c) Effective date. The personal income tax rate prescribed by the preceding subsections of this section shall be given effect in determining the rate of tax imposed for all taxable years or portions thereof beginning on or after January 1, 1963.

Section 4B. Effect of Rate Changes During a Taxable Year.

4B.01 If the rate of personal income tax imposed by the West Virginia Personal Income Tax Act is changed to become effective after December 31, 1962, and if a taxpayer subject to the West Virginia Personal Income Tax Act has a taxable year which includes the effective date of the change (unless that date is the first day of his taxable year), then the following rules shall be observed in computing such taxpayer's rate of tax: (1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the taxable year.

Section 5. Optional tax for certain resident individuals.

5.01. General. Optional tax tables have been promulgated which enable resident individuals who meet the conditions of this regulation to compute their taxes on the basis of their federal adjusted gross income. By utilizing the optional tax tables, the taxpayer may eliminate the computations involved in arriving at West Virginia taxable income.

5.02. Tables. The ~~following~~ optional tax tables show the amounts of tax due to the nearest dollar. See Appendix A

A

If your total income is— At least	But less than	And the number of exemptions is— 1	If you are filing separately or jointly 2	3	4 If 4 or more, there is no tax
		Your tax is—			
$ 0	$ 700	$ 0	$ 0	$ 0	$ 0
700	800	1	0	0	0
800	900	2	0	0	0
900	1000	3	0	0	0
1000	1100	4	0	0	0
1100	1200	5	0	0	0
1200	1300	6	0	0	0
1300	1400	7	0	0	0
1400	1500	9	1	0	0
1500	1600	10	2	0	0
1600	1700	11	3	0	0
1700	1800	12	5	0	0
1800	1900	13	6	0	0
1900	2000	14	7	0	0
2000	2100	15	8	1	0
2100	2200	16	9	2	0
2200	2300	17	10	3	0
2300	2400	18	11	4	0
2400	2500	19	12	5	0
2500	2600	20	13	6	0
2600	2700	21	14	7	0
2700	2800	23	15	8	1
2800	2900	24	16	9	2
2900	3000	25	18	10	3
3000	3100	26	19	11	4
3100	3200	27	20	12	5
3200	3300	28	21	13	6

If your total income is— At least	But less than	And the number of exemptions is 1	2 Single or filing separately	2 Filing jointly	3 Single or filing separately	3 Filing jointly	4 Single or filing separately	4 Filing jointly	5 Single or filing separately	5 Filing jointly	6	7	8 If 8 or more, there is no tax
		Your tax is											
$ 3300	$ 3400	$ 29	$ 22	$ 22	$ 15	$ 15	$ 7	$ 7	$ 0	$ 0	$ 0	$ 0	$ 0
3400	3500	31	23	23	16	16	9	9	1	1	0	0	0
3500	3600	32	24	24	17	17	10	10	2	2	0	0	0
3600	3700	33	25	25	18	18	11	11	3	3	0	0	0
3700	3800	34	26	26	19	19	12	12	4	5	0	0	0
3800	3900	35	28	27	20	20	13	13	6	6	0	0	0
3900	4000	37	29	28	21	21	14	14	7	7	0	0	0
4000	4100	38	30	29	22	22	15	15	8	8	1	0	0
4100	4200	39	31	30	23	23	16	16	9	9	2	0	0
4200	4300	40	32	32	24	24	17	17	10	10	3	0	0
4300	4400	41	33	33	26	25	18	18	11	11	4	0	0
4400	4500	42	35	34	27	27	19	19	12	12	5	0	0
4500	4600	44	36	35	28	28	20	20	13	13	6	0	0
4600	4700	45	37	36	29	29	21	21	14	14	7	0	0
4700	4800	46	38	37	30	30	23	23	15	15	8	1	0
4800	4900	47	39	38	31	31	24	24	16	16	9	2	0
4900	5000	48	40	39	33	32	25	25	18	18	10	3	0
5000	5100	49	42	40	34	33	26	26	19	19	11	4	0
5100	5200	51	43	41	35	34	27	27	20	20	12	5	0
5200	5300	52	44	42	36	35	28	28	21	21	14	6	0
5300	5400	54	45	43	37	36	29	29	22	22	15	7	0
5400	5500	55	46	45	38	37	31	30	23	23	16	9	1
5500	5600	57	47	46	40	38	32	31	24	24	17	10	2
5600	5700	58	49	47	41	39	33	32	25	25	18	11	3
5700	5800	59	50	48	42	41	34	33	26	26	19	12	5
5800	5900	61	51	49	43	42	35	34	28	27	20	13	6
5900	6000	62	53	50	44	43	37	36	29	28	21	14	7

State Tax Department
Leg. Reg. 11-10
Series XXI

Section 5.02

A

If your total income is— At least	But less than	1	2 Filing single or separately	2 Filing jointly	3 Filing single or separately	3 Filing jointly	4 Filing single or separately	4 Filing jointly	5 Filing single or separately	5 Filing jointly	6 Filing single or separately	6 Filing jointly	7 Filing single or separately	7 Filing jointly	8 Filing single or separately	8 Filing jointly	9 Filing single or separately	9 Filing jointly	10 Filing single or separately	10 Filing jointly	11 Filing single or separately	11 Filing jointly	12	13	14 If 14 or more, there is no tax
		and the number of exemptions is— Your tax is—																							
$ 6000	$6100	$ 64	$ 53	$ 51	$ 45	$ 44	$ 38	$ 37	$ 30	$ 29	$ 22	$ 21	$ 15	$ 15	$ 8	$ 8	$ 1	$ 1	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
6100	6200	65	55	52	47	45	39	38	31	30	23	23	16	16	9	9	2	2	0	0	0	0	0	0	0
6200	6300	67	57	54	48	46	40	39	32	32	24	24	17	17	10	10	3	3	0	0	0	0	0	0	0
6300	6400	68	58	55	49	47	41	40	33	33	26	25	18	18	11	11	4	4	0	0	0	0	0	0	0
6400	6500	70	60	56	50	48	42	41	35	34	27	27	19	19	12	12	5	5	0	0	0	0	0	0	0
6500	6600	71	61	57	52	49	44	42	36	35	28	28	20	20	13	13	6	6	0	0	0	0	0	0	0
6600	6700	72	63	58	53	50	45	43	37	36	29	29	21	21	14	14	7	7	0	0	0	0	0	0	0
6700	6800	74	64	59	55	52	46	44	38	37	30	30	23	23	15	15	8	8	1	1	0	0	0	0	0
6800	6900	75	66	61	56	53	47	45	39	38	31	31	24	24	16	16	9	9	2	2	0	0	0	0	0
6900	7000	77	67	62	58	54	48	46	40	39	32	32	25	25	18	18	10	10	3	3	0	0	0	0	0
7000	7100	78	69	63	59	55	49	47	42	40	34	33	26	26	19	19	11	11	4	4	0	0	0	0	0
7100	7200	80	70	64	60	56	51	49	43	41	35	34	27	27	20	20	12	12	5	5	0	0	0	0	0
7200	7300	81	71	65	62	58	52	50	44	42	36	35	28	28	21	21	14	14	6	6	0	0	0	0	0
7300	7400	83	73	66	63	59	53	51	45	43	37	36	29	29	22	22	15	15	7	7	0	0	0	0	0
7400	7500	84	74	68	65	60	55	52	46	45	38	37	31	30	23	23	16	16	9	9	1	1	0	0	0
7500	7600	86	76	69	66	61	57	53	47	46	40	38	32	31	24	24	17	17	10	10	2	2	0	0	0
7600	7700	87	77	70	68	62	58	54	49	47	41	39	33	32	25	25	18	18	11	11	3	3	0	0	0
7700	7800	89	79	71	69	63	59	56	50	48	42	41	34	33	26	26	19	19	12	12	5	5	0	0	0
7800	7900	91	80	72	70	65	61	57	51	49	43	42	35	34	28	27	20	20	13	13	6	6	0	0	0
7900	8000	92	82	74	72	66	62	58	53	50	44	43	37	36	29	28	21	21	14	14	7	7	0	0	0
8000	8100	94	83	75	73	67	64	59	54	51	45	44	38	37	30	29	22	22	15	15	8	8	1	0	0
8100	8200	95	85	73	75	68	65	60	56	52	47	45	39	38	31	30	23	23	16	16	9	9	2	0	0
8200	8300	97	86	77	76	69	67	61	57	54	48	46	40	39	32	32	24	24	17	17	10	10	3	0	0
8300	8400	99	88	78	78	70	68	63	58	55	49	47	41	40	33	33	26	25	18	18	11	11	4	0	0
8400	8500	100	90	79	79	71	70	64	60	56	50	48	42	41	35	34	27	27	19	19	12	12	5	0	0
8500	8600	102	91	81	81	73	71	65	61	57	52	49	44	42	36	35	28	28	20	20	13	13	6	0	0
8600	8700	104	93	82	82	74	72	66	63	58	53	50	45	43	37	36	29	29	21	21	14	14	7	0	0
8700	8800	105	94	83	83	75	74	67	64	59	55	52	46	44	38	37	30	30	23	23	15	15	8	1	0
8800	8900	107	96	84	85	76	75	68	65	61	56	53	47	45	39	38	31	31	24	24	16	16	9	2	0
8900	9000	109	98	85	87	77	77	70	67	62	58	54	48	46	40	39	33	32	25	25	18	18	10	3	0
9000	9100	110	99	86	89	79	78	71	69	63	59	55	49	47	42	40	34	33	26	26	19	19	11	4	0
9100	9200	112	101	88	90	80	80	72	70	64	60	56	51	49	43	41	35	34	27	27	20	20	12	5	0
9200	9300	114	103	89	92	81	81	73	71	65	62	58	52	50	44	42	36	35	28	28	21	21	14	6	0
9300	9400	115	104	90	93	82	83	74	73	66	63	59	54	51	45	43	37	36	29	29	22	22	15	7	0
9400	9500	117	106	91	95	83	84	75	74	67	65	60	55	52	46	45	39	37	31	30	23	23	16	9	1
9500	9600	118	107	92	97	84	86	77	76	69	66	61	57	53	47	46	40	38	32	31	24	24	17	10	2
9600	9700	120	109	93	98	85	87	78	77	70	68	62	58	54	49	47	41	39	33	32	25	25	18	11	3
9700	9800	122	111	95	100	87	89	79	79	71	69	63	59	56	50	48	42	41	34	33	26	26	19	12	5
9800	9900	124	112	96	101	88	91	80	80	72	70	65	61	57	51	49	43	42	35	34	28	27	20	13	6
9900	10000	125	114	97	103	89	92	81	82	74	72	66	62	58	53	50	44	43	37	36	29	28	21	14	7

5.03. Conditions for optional computation. The optional tax tables may be used only if the following conditions are satisfied by the taxpayer, or by both husband and wife whose federal income tax is determined on a joint return:

(a) The taxpayer has elected to use the standard deduction for federal income tax purposes or to pay the federal optional tax.

(b) The taxpayer has no items of income or deduction described in section 12(b) or (d) as an individual, as a partner, or as a beneficiary of an estate or trust.

(c) The taxpayer's federal income tax is not reduced by operations of:

(1) The federal alternative tax on long term capital gains, or

(2) A federal provision which has the effect of taxing income of the taxable year as if it were partly or wholly income of a prior taxable year.

(d) A taxpayer who elects to use the optional tax tables must file his return on the West Virginia short form and must have gross income of less than $10,000.

(e) In order to qualify to use the short form and optional tax tables, the taxpayer must not

(1) file for a taxable period other than the calendar year,

(2) be a resident for only part of the calendar year,

(3) have a spouse who files a separate West Virginia return,

(4) claim an exclusion for sick pay,

(5) claim a deduction for employee business expenses on his federal return,

(6) have income which is exempt from federal income tax but is subject to West Virginia income tax,

(7) have income which is exempt from West Virginia income tax but is subject to federal income tax,

(8) file an estimated tax return,

(9) itemize deductions, in lieu of standard deduction,

(10) claim a credit for business and occupation tax or transportation privilege tax,

(11) claim a credit for income tax imposed for the taxable year by another state or by the District of Columbia,

(12) file his return as the surviving spouse.

5.04. Manner of election. By electing to file the West Virginia short form, the taxpayer becomes eligible to use the optional tax table. A taxpayer may use the short form if he meets the following conditions:

(a) If the taxpayer's total income (or, if married, (the combined total income of husband and wife) consists only of wages, salaries, interest and dividends, and

(b) The total amount of interest and dividends does not exceed $200, and

(c) The taxpayer claims the 10% standard deduction, and

(d) If the taxpayer is married and filed a joint federal return, he may also file a joint West Virginia income tax return on the West Virginia short form.

5.05. Husband and wife computing West Virginia taxes separately. (Reserved).

Section 6. Accounting Periods and Methods.

6.01. Accounting Periods. A taxpayer's taxable year under these regulations shall be the same as his taxable year for federal tax purposes.

6.02. Change of Accounting Periods. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of these regulations shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the West Virginia standard deduction, the West Virginia personal exemptions, and the credits allowed under section eight (8) of the West Virginia Income Tax Act shall be prorated to reflect the portion of the year which is being covered by the return being filed due to the change of accounting periods.

6.03. Accounting Methods. A taxpayer's method of accounting for West Virginia tax purposes shall be the same as that used for federal tax purposes. In the absence of any method for federal tax purposes, his taxable income for West Virginia tax purposes shall be computed under a method which will clearly reflect income.

6.04. Change of Accounting Methods.

(a) If a taxpayer's method of accounting is changed for federal tax purposes, his method of accounting shall be similarly changed for West Virginia tax purposes.

(b) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(c) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments.

Section 7. Resident and nonresident defined.

7.01. Resident individual.

(a) General. An individual may be a resident of West Virginia for income tax purposes, and be taxable as a resident, even though he would not be deemed a resident for other purposes. As used in these regulations, the term "resident individual" includes

(1) all persons domiciled in this state, subject to the exceptions set forth in paragraph (b) below, and

(2) any individual, other than a member of the Armed Forces of the United States, who is not domiciled in this state but who maintains a permanent place of abode in this state and spends in the aggregate more than 183 days of the taxable year in this state.

(b) Certain persons not deemed residents although domiciled in West Virginia. Any person domiciled in West Virginia is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following conditions:

(1) he maintains no permanent place of abode in this state,

(2) he maintains a permanent place of abode elsewhere, and

(3) he spends in the aggregate not more than 30 days of the taxable year in this state. For example, an indivi-

dual, although retaining his West Virginia domicile, may maintain his only permanent place of abode in New York. As long as he continues to meet all three of the conditions stated above, he will be a nonresident of West Virginia for income tax purposes. However, if for any taxable year he fails to meet any one of these three conditions, he is subject to West Virginia income tax as a resident for that year. Where an individual domiciled in West Virginia claims to be a nonresident for any taxable year, the burden is upon him to show that during that year he satisfied all three of the conditions above set forth.

(c) Rules for days within and without the state. In counting the number of days spent within and without the state, presence within the state for any part of a calendar day constitutes a day spent within the state except that such presence within the state may be disregarded if it is solely for the purpose of boarding a plane, train or bus for travel to a destination outside of the state, or while traveling by motor, plane or train through the state to a destination outside the state. Any person domiciled outside this state who maintains a permanent place of abode within this state during any taxable year and claims to be a nonresident must keep and have available for examination by the Tax Commissioner adequate records to substantiate the fact that he did not spend more than 183 days of such taxable year within the state.

(d) Domicile. Domicle, in general, is the place which an individual intends to be his permanent home; the place to which he intends to return whenever he may be absent.

(1) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. The fact that a person registers and votes in one place is important but not necessarily determinative, especially if the facts indicate that he did this merely to escape taxation in some other jurisdiction.

(2) Domicile is not dependent on citizenship. For example, an alien who has permanently established

his home in West Virginia is domiciled in this state regardless of whether he has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in West Virginia, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his West Virginia domicile unless it is clearly shown that he intends to remain abroad premanently and not to return.

(3) A person can have only one domicile. If he has two or more homes, his domicile is at the one which he regards and uses as his principal and permanent home. In determining his intention in the matter, the length of time customarily spent at each location is important but not necessarily conclusive. As pointed out above, a person who maintains a permanent place of abode in this state and spends more than 183 days of the taxable year in this state is taxable as a resident regardless of his domicile.

(4) Ordinarily a wife's domicile follows that of her husband. Likewise a child's domicile ordinarily follows that of his father, or of his mother after the father's death, until he reaches the age of self-support and actually establishes his own separate domicile.

(e) Permanent place of abode. A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Also, a place of abode, whether in this state or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. Thus, an individual domiciled in another state may be assigned to his employer's West Virginia office for a fixed and limited period, after which he is to return to his permanent location. If such an individual takes an apartment in West Virginia during this period, he will not be deemed a resident, even though he spends more than 183 days of the taxable year in West Virginia, because his place of abode here is not permanent. He will, of course, be taxable as a nonresident on his income from West Virginia sources, including his salary or other compensation for services performed in West Virginia. However, if his assignment to his employer's West

Virginia office is not for a fixed or limited period, but is for an indefinite period, his West Virginia apartment will be deemed a permanent place of abode and he will be a resident for tax purposes if he spends more than 183 days of the year in West Virginia.

(1) In the case of a person domiciled in West Virginia, the maintenance of a permanent place of abode in this state is alone sufficient to make him a resident for tax purposes, even though he remains outside the state for the entire year; the 183-day rule applies only to taxpayers who are not domiciled in West Virginia.

7.02. Nonresident individual. For income tax purposes, a nonresident individual is anyone who is not a resident as defined in subsection (a) of this regulation. Except where these regulations specifically provide otherwise, all references to nonresidents are equally applicable to nonresident aliens.

7.03. Resident estate or trust. A resident estate or trust is

(a) The estate of a decedent who at his death was domiciled in this state;

(b) a trust created by will of a decedent who at his death was domiciled in this state; or

(c) a trust created by, or consisting of property of, a person domiciled in this state.

Example 1. A, who is domiciled in Canada, creates a trust with the X Trust Company in Charleston, as trustee. The corpus of the trust consists of securities of American corporations, which are actively traded by the trustee on the several Stock Exchanges and consists of rental property located within this State. The beneficiaries of the trust are all West Virginia residents. Regardless of whether the trust is held to be a resident of the United States for federal income tax purposes, it is, for West Virginia income tax purposes, a nonresident trust.

Example 2. A, who is a domiciliary of West Virginia, creates a trust with the Y Trust Company in Pittsburgh, Pennsylvania, as trustee. The trust corpus consists of West Virginia rental property and Pennsylvania rental property. The beneficiaries of the trust are all Pennsylvania residents. The trust, for West Virginia income tax purposes, is a resident trust.

7.04. Nonresident estate or trust. A nonresident estate or trust is an estate or trust which is not a resident estate or trust as defined in subsection 7.03 of this regulation.

7.05. Cross reference. For effect of change of an individual's resident status, see section 54.

Section 8. Credits against tax.

8.01. Business and occupation tax credit.

(a) If the taxpayer is subject to the business and occupation tax imposed by West Virginia Code ch. 11, art. 13, he may be entitled to a tax credit against his West Virginia income tax. However, the amount of the credit shall not exceed the amount of income tax attributable to West Virginia taxable income derived from the business or activity subjected to such other tax. If the West Virginia taxable income of the taxpayer includes income from a partnership, estate, trust or a subchapter S corporation, a part of any business and occupation tax liability of the partnership, estate, trust or subchapter S corporation shall be allowed, in computing the credit, in an amount proportionate to the income of such partnership, estate, trust or subchapter S corporation, which is included in the taxpayer's West Virginia taxable income.

(1) The credit shall be limited to the smallest of the following:

The amount of business and occupation tax imposed; or

the amount of West Virginia income tax before credits; or

the amount of West Virginia income tax imposed on income from the business subject to the business and occupation tax.

(2) The last limitation is placed upon the amount of the credit to preclude exempting from personal income tax such of the taxpayer's income as is not derived from a business subject to business and occupation tax. Stated another way, the credit for business and occupation tax cannot offset the income tax imposed on income derived from sources which are not subject to business and occupation tax.

(3) There can be no credit against personal income tax for business and occupation tax imposed on a business which operated at a loss, because no income from a business which operates at a loss enters into a taxpayer's West Virginia taxable income. Likewise, there can be no credit against personal income tax for business and occupation tax imposed, unless the West Virginia taxable income of a taxpayer includes business income. The West Virginia taxable income of a taxpayer is determined by offsetting business losses against business gains.

(b) Who may claim the credit. The credit is allowable to taxpayers engaged in activities subject to the business and occupation tax in their capacities as proprietors, members of partnerships, beneficiaries and fiduciaries of estates and trusts, and stockholders of corporations, if and only if, they elected to be taxed under Subchapter S of the Internal Revenue Code. The credit allowed these taxpayers is based on their share of the business and occupation tax imposed and is limited to the amount of personal income tax imposed on business income of the proprietorship, partnership, Subchapter S corporation, estate or trust. Salaries that are not, in fact, part of the distributive share of the partnership income, (for example, salaries guaranteed to partners by the articles of partnership), and salaries paid to stockholders of Subchapter S corporations, are not income of parnerships or Subchapter S corporations for the purpose of computing the credit.

Example 1. The taxpayer is engaged in a sole proprietorship which is subject to the business and occupation tax. The amount of business and occupation tax liability imposed for the taxable year was $75.00. The taxpayer's net income from the business was $12,000. He received no other income during the year. The taxpayer filed a joint return and claimed the standard deduction and five (5) exemptions. Therefore, his West Virginia income tax before credits would be $100.00. The business and occupation tax credit is limited to $75.00, the amount of business and occupation tax imposed.

Example 2. Assume the same facts as in example 1 except that the amount of business and occupation tax imposed was $300.00. The West Virginia income tax before credits is $100.00, therefore, the business and occupation tax credit is limited to $100.00, the amount of income tax before credits.

Example 3. The taxpayer was engaged in a business (partnership) subject to the business and occupation tax. His share of the distributive profits was $8,000, and his share of the business and occupation tax liability was $400.00. In addition to his business income, the taxpayer received a salary of $4,000.00 from a local bank; therefore, his total income for the taxable year was $12,000.00. Using the standard deduction and five (5) exemptions, the West Virginia income tax liability before credits would be $100.00. The business and occupation tax credit is limited to $66.67, the amount of income tax imposed on income from the business subject to the business and occupation tax credit.

(c) The taxpayer's business and occupation tax credit is determined by the completion of the ~~following~~ schedule in Appendix B.

Section 8.01(c)

B

IT-140 WEST VIRGINIA RESIDENT INCOME TAX RETURN—1963

State Tax Department
Income Tax Division

Or other taxable year beginning Jan. 1 19 63 ending Dec. 31 19 63

PLEASE PRINT OR TYPE	First name and middle initial / Last name
	If this is a joint return of husband and wife, use first names and middle initials of both
	Home Address — Number and street or rural route
	City, town or post office / County / State
Your Social Security Number	
Occupation	
Wife's Social Security Number	
Occupation	

NOTE: IF NO ENTRIES ARE REQUIRED ON LINES 2-14, ENTER AMOUNT ON LINE 1 ON LINE 9.

Line			
1.	Total income (from line 15, Schedule A)		$ 12,000 00
2.	Interest income on state and local bonds other than West Virginia		
3.	Other additions (Specify)		
4.	Sum of lines 1-3		$
5.	Interest income on United States obligations	$	
6.	Modification for the sale of property (Schedule E)		
7.	Other subtractions (Specify)		
8.	Sum of lines 5-7		
9.	Line 4 less line 8 (Total West Virginia income)		$ [illegible] 00
10.	Standard deduction: 10% of amount on line 9, but not in excess of $1,000		$ 1,000 00
11.	Total itemized deductions (from line 7, Schedule B)	$	
12.	West Virginia and other income taxes itemized on federal return		
13.	Line 11 less line 12	$	
14.	Interest paid to carry bonds exempt from West Virginia income tax		
15.	Line 13 less line 14 (West Virginia itemized deductions)		$
16.	Line 9 less line 10 or line 15		$ 11,000 00
17.	Exemptions: Enter number claimed on federal return 5 x $600. Total		3,000 00
18.	Line 16 less line 17 (West Virginia taxable income)		$ 8,000 00
19.	West Virginia income tax (Calculated from rate schedule on page 4)		$ 100 00
20.	West Virginia tax withheld (If joint return, enter combined total for both husband and wife. Attach IT-102(a) for total salaries or wages and the total amount withheld.)	$ 25 15	
21.	Estimated tax payments		
22.	B&O or TP tax credits (line 6, Schedule C)	66 67	
23.	Income taxes paid other states (line 11, Schedule D)		
24.	Total payment and credits (line 20 plus 21, 22 and 23)		$ 91 62
25.	If line 19 is larger than line 24, enter the difference as BALANCE DUE (Attach remittance for full balance due payable to State Tax Commissioner)		$ 8 15
26.	If line 24 is larger than line 19, enter the difference as OVERPAYMENT (Overpayment of $1 or less is refundable only upon written request attached to return)		$
27.	Amount on line 26 is to be credited on 1964 Estimated Tax ☐		
28.	Amount on line 26 is to be refunded ☐		

Do Not Use Space Below

A. Were you a West Virginia resident during the entire year? ☐ Yes ☐ No
If "No" give period of West Virginia residency.
From (mo., day, yr.) ____
To (mo., day, yr.) ____

B. Did you file a return last year? ☐ Yes ☐ No
If yes, did you file West Virginia Short Form ☐ or Long Form ☐

C. ☐ Single ☐ Joint
[illegible]
☐ [illegible]
[illegible]

I certify that this is a correct return. If prepared by a person other than taxpayer, his certification is based on all information of which he has any knowledge.

Taxpayer's signature and date (If a joint return, BOTH HUSBAND AND WIFE MUST SIGN) Wife's signature and date

Signature of preparer other than taxpayer address date

B

IT-140 Page 2 1963

SCHEDULE A INCOME FROM FEDERAL RETURN (Enter total amount of each item)

1. Wages, salaries, tips, and other compensation.

Employer's Name	Where Employed	West Virginia Tax Withheld		Gross Wages	
Local Bank	[illegible], West Virginia	$ 25	05	$ 4,000	00
	Enter totals here →	$		$	

2. Sick pay and employee business expense as shown on federal return		
3. Taxable compensation (Total wages or salaries, etc., less line 2)	$	
4. Business profit or loss		
5. Farming profit or loss		
6. Dividend income (less federal exclusions)		
7. Interest income		
8. Capital asset gains and losses		
9. Non-capital asset gains and losses		
10. Pension and annuity income		
11. Rent and royalty income		
12. Partnership(s) income and loss	8,000	00
13. Estate or trust income		
14. Other income or loss (state nature)		
15. Total of lines 3 through 14	$ 12,000	00

SCHEDULE B ITEMIZED DEDUCTIONS FROM FEDERAL RETURN (Enter total amount of each deduction)

1. Contributions	$	
2. Interest		
3. Taxes		
4. Medical and dental expenses		
5. Casualty losses (month and year of loss ______ 19___)		
6. Other deductions		
7. Total of lines 1 through 6	$	

SCHEDULE C COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION OR TRANSPORTATION PRIVILEGE TAX PAYABLE

1. Business and occupation or transportation privilege tax payable for the taxable year A B Partnership (Business Name(s)) Account Identification Number(s)			$ 400	00
2. West Virginia Income tax (line 19, page 1)			100	00
3. Allowable income from above business(es) included in Schedule A (See instructions)	$ 8,000	00		
4. West Virginia total income (line 9, page 1)	$ 12,000	00		
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)			66	67
6. Total credit (the smallest of lines 1, 2 or 5)			$ 66	67

SCHEDULE D COMPUTATION OF CREDIT FOR INCOME TAX IMPOSED BY ANOTHER STATE

1. Income tax imposed by the State of ______ for the taxable year 196__	$	
2. West Virginia Income tax (line 19, page 1)		
3. Net income derived from above state included in West Virginia total income		
4. West Virginia total income (line 9, page 1)		
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)		
6. West Virginia taxable income (line 18, page 1)		
7. Alternative West Virginia taxable income (line 6 minus line 5)		
8. Alternative West Virginia income tax (West Virginia rate schedule applied to amount shown on line 7)		
9. Limitation of credit (line 2 minus line 8)		
10. Maximum credit (line 2 minus line 6 of schedule C above)		
11. Total credit (the smallest of lines 1, 2, 5, 9 or 10)	$	

SCHEDULE E MODIFICATION FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY ACQUIRED PRIOR TO JANUARY 1, 1961

Kind of Property	1. Date Acquired	2. Date Sold	3. [illegible]	4. [illegible] Value 1/1/61	5. [illegible] 1/1/61	6. [illegible] Cost or Other [illegible]	7. [illegible]	8. [illegible]

(d) No credit shall be allowed against the West Virginia income tax unless the West Virginia taxable income of a taxpayer includes positive amounts of income from a business subject to the business and occupation tax. In computing the business income for purposes of applying the ratio of income from business, subject to the business and occupation tax to the total West Virginia adjusted gross income for determining the limitation of credit; business losses must be offset against business gains to reflect the positive amount of business income, subject to business and occupation tax in West Virginia taxable income. The purpose of the business and occupation tax credit is to avoid the imposition of income tax, and not to relieve the taxpayer from the imposition of income tax on income not subject to the business and occupation tax that would otherwise have been imposed in the absence of business activity.

<u>Example 1</u>. Taxpayer is engaged in a business subject to the business and occupation tax. Business and occupation tax in the amount of $500.00 was imposed on gross receipts of $40,000.00. His business operated at a loss of $10,000.00. The taxpayer had income, from a source other than his business, in the amount of $30,000.00 for the taxable year. This taxpayer is not entitled to a business and occupation tax credit on his personal income tax return, for his West Virginia taxable income does not include a positive amount of

income from business subject to the business and occupation tax.

Example 2. The taxpayer is engaged in two businesses, grocery and rental, which are subject to business and occupation tax. His grocery business operated at a $5,000.00 loss and had business and occupation tax in the amount of $107.50 imposed on it. His rental business had net income of $5,000 and had business and occupation tax in the amount of $350.00 imposed on it. Also, he received a salary of $6,000.00 from a local bank. Assuming no modifications or adjustments, the taxpayer has West Virginia adjusted gross income of $6,000.00. The taxpayer is single and claims the standard deductions; therefore, his West Virginia income tax liability before credits is $60.80. He is not entitled to a business and occupation tax credit on his West Virginia personal income tax return, for his West Virginia taxable income does not include a positive amount of income from business subject to the business and occupation tax. See ~~the following~~ ~~schedule~~. Appendix C

SCHEDULE C COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION OR TRANSPORTATION PRIVILEGE TAX PAYABLE

1. Business and occupation or transportation privilege tax payable for the taxable year			$ 350	00
Business Name(s) ... Account Identification Number(s)				
2. West Virginia income tax (line 19, page 1)			60	80
3. Allowable income from above business(es) included in Schedule A (See instructions)	$ -0-			
4. West Virginia total income (line 9, page 1)	$ 6,000	00		
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)			-0-	
6. Total credit (the smallest of lines 1, 2 or 5)			$ -0-	

(e) In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a subchapter S corporation, a part of any business and occupation tax liability of the partnership estate, trust or corporation shall be allowed to the taxpayer, in computing the business and occupation tax credit, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

Example 1. A and B operated the AB partnership, which was subject to business and occupation tax. The partnership had $150.00 business and occupation tax imposed on $40,000.00 of gross receipts. Each partner's distributable net profit was $10,000.00. This $10,000.00 constituted the sole source of income to A. However, B had income from a source other than a business subject to business and occupation tax, as follows: $5,000.00 salary from XYZ National Bank. Both partners filed joint returns, claiming the standard deduction of $1,000.00, and each partner had five exemptions. Assuming no modifications or other adjustments for these partners, the total credit for business and occupation tax imposed for Partner A would be $74.00 and for Partner B, $75.00. Please see the ~~following~~ completed schedules for a determination of each partner's business and occupation tax credit. in Appendix D.

D

Partner A's Computation for Business and Occupation Tax Credit

SCHEDULE C COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION OR TRANSPORTATION PRIVILEGE TAX PAYABLE

1. Business and occupation or transportation privilege tax payable for the taxable year			$ 75	00
AB Partnership (Business Name(s)) — Account Identification Number(s)				
2. West Virginia income tax (line 19, page 1)			74	00
3. Allowable income from above business(es) included in Schedule A (See Instructions)	$ 10,000	00		
4. West Virginia total income (line 9, page 1)	$ 10,000	00		
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)			74	00
6. Total credit (the smallest of lines 1, 2 or 5)			$ 74	00

Partner B's Computation for Business and Occupation Tax Credit

SCHEDULE C COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION OR TRANSPORTATION PRIVILEGE TAX PAYABLE

1. Business and occupation or transportation privilege tax payable for the taxable year			$ 75	00
AB Partnership (Business Name(s)) — Account Identification Number(s)				
2. West Virginia income tax (line 19, page 1)			148	00
3. Allowable income from above business(es) included in Schedule A (See Instructions)	$ 10,000	00		
4. West Virginia total income (line 9, page 1)	$ 15,000	00		
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)			98	67
6. Total credit (the smallest of lines 1, 2 or 5)			$ 75	00

(1) Partner A's total credit is limited to the amount of West Virginia income tax imposed on the income derived from the business which was subject to the business and occupation tax.

(2) Partner B's total credit is limited to the amount of business and occupation tax imposed on the business from which the income was derived, and is limited to the portion of the income tax imposed which is attributable to West Virginia taxable income derived by the taxpayer from the business or occupation which was subject to the business and occupation tax.

(3) A and B are entitled to a part of the business and occupation tax liability imposed on the partnership in proportion to the income of the partnership included in each partner's West Virginia taxable income. Since each partner received 50% of the distributable net profit, each partner was entitled to use 50% of the business and occupation tax liability of the partnership in computing his total credit for business and occupation tax; therefore, each partner's share of the business and occupation tax liability to be used as a limiting factor in the computation of the credit is $75.00.

(f) In determining the income from a business or occupation which is subject to the business and occupation tax, the net income, from such business or occupation, as reported in federal adjusted gross income without reference to the component items of income from the business or occupation, shall be considered prima facie evidence of the income of the subject business. For purposes of determining net income, gross income may include, but is not limited to: gross income from sales, interest income, bad debt recoveries, rents and royalties, earned discounts and miscellaneous income.

(1) Salaries which have been deducted as a business expense for federal income tax purposes, in determining net income from the business or occupation subject to the business and occupation tax, shall not thereafter be included as income from the business in determining the individual's business and occupation tax credit.

(g) Partnerships. In determining the income from a partnership which is subject to the business and occupation tax, the salaries paid to the partners which are not considered a draw against the distributive share of profits shall be deducted in arriving at the net income of the partnership; and such salaries shall not be included in the basis for computing the business and occuapation tax credit of the individual partner. If the salary is not a guaranteed salary, provided in the articles of partnership, the Income Tax Division will accept as prima facie evidence that the salary is considered a draw against distributive share of profits; therefore, the salary will be allowed in the basis for computing the business and occupation tax credit of the individual partner.

(h) Subchapter S corporation. In determing the income from a subchapter S corporation which is subject to the business and occupation tax, salaries paid to stockholders shall be deducted in arriving at the net income of said corporation. The taxpayer, who is a stockholder and receives a salary from such corporation, is not permitted to use said salary in the computation of his business and occupation tax credit on his West Virginia personal income tax return, for such salaries are not income of a subchapter S corporation (as required by West Virginia Code ch. 11, art. 21, sec. 8) but are expenses of a corporation deductible in arriving at the net income of such corporation.

> Example 1. Mr. X is a stockholder in a subchapter S corporation and is also an employee of the corporation. Mr. X receives a salary of $6,000.00 from the corporation. At the end of the corporation's taxable year, Mr. X receives $2,000.00 as his distributive share of profits from the corporation. In computing his business and occupation tax credit on his West Virginia personal income tax return, Mr. X is permitted to use only his distributive share of profits ($2,000) as his basis.

8.02. Transportation Privilege Tax Credit. The preceding regulation (Reg. 8.01) is equally applicable to the transportation privilege tax credit; therefore, no lengthy regulation in regard to transportation privilege tax credit is presented.

8.03. Federal credits not allowed. The credits against income tax allowed by the federal government; such as, retirement income credit, any dividends received credit, etc., are not allowable credits against the West Virginia personal income tax. West Virginia allows credits against income tax only for:

(a) West Virginia income taxes withheld (Reg. §73),

(b) West Virginia estimated taxes paid (Reg. §55),

(c) Business and occupation tax imposed (Reg. §8),

(d) Transportation privilege tax imposed (Reg. §8),

(e) Income taxes paid another state (Reg. §20), and

(f) Income taxes paid state of residence (Reg. §40).

Section 9. Meaning of terms.

9.01. Any term used in the West Virginia Personal Income Tax Act and these regulations shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in the West Virginia Income Tax Act and these regulations to the laws of the United States shall mean the provision of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to January 1, 1963, shall be given effect in determining the taxes imposed by the West Virginia Income Tax Act for the tax period beginning January 1, 1962, and thereafter. No amendment made to the laws of the United States relating to income taxes on or after January 1, 1963, shall be given effect.

Example: If on December 6, 1963, Congress passed a law making workmen's compensation benefits subject to federal income tax, the law will have no affect on the West Virginia Income Tax Act; for no amendment made to the laws of the United States on or after January 1, 1963, shall be given effect.

SECTION 10 RESERVED FOR FUTURE USE.

Section

~~PART II. RESIDENTS~~

Section 11. West Virginia taxable income of a resident individual.

11.01. General. The tax rates specified in sections 4 and 4A of these regulations are applied against the taxpayer's West Virginia taxable income. The taxpayer's federal adjusted gross income is the actual starting point each year for computing the West Virginia taxable income on which his West Virginia tax is based. The West Virginia taxable income of a resident individual means his federal adjusted gross income with the modifications stated in section 12 of these regulations, less his West Virginia standard or itemized deduction and personal exemption.

11.02. West Virginia taxable income of husband and wife.

(a) If a husband and wife file separate federal returns for a particular year, they must also file separate West Virginia returns for that year.

(b) If a husband and wife file a joint federal income tax return for a particular year, or if neither files a federal return:

(1) They may file a joint West Virginia income tax return, or

(2) They may file separate West Virginia income tax returns.

(c) If both spouses are residents of West Virginia and choose to file separate West Virginia returns, each must determine his or her West Virginia income, exemptions, and itemized deductions, as if his or her total federal income, exemptions, and itemized deductions had been determined separately; if the standard deduction is claimed in this case, it must not exceed 10% of the aggregate of their separate West Virginia total incomes or $1,000, whichever is less, but may be taken by either or divided in such portions as they may choose.

11.03. West Virginia taxable income of husband and wife having different resident status. Irrespective of the provisions of subsection 3 above, if either the husband or wife is a resident of West Virginia and the other is a nonresident, they must file separate West Virginia returns unless they

(a) file a joint federal return and

(b) elect to file a joint state return computing their joint West Virginia taxable income as if both spouses were residents of West Virginia. This option applies only in those cases where one spouse was a resident of West Virginia for the entire taxable year and the other spouse was a nonresident for the entire taxable year. This option does not apply in cases where either the husband or wife separately changed his or her residence during the taxable year. (For change of resident status during the year, see Reg. 54.)

Section 12. West Virginia adjusted gross income of a resident individual.

12.01. General. The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income with certain modifications. These modifications relate to items which are treated differently under the West Virginia Personal Income Tax Act than under the United States Internal Revenue Code of 1954. Section 12.03 below lists the modifications which increase West Virginia adjusted gross income in comparison with federal adjusted gross income, while section 12.04 below lists the modification items which in such comparison reduce the West Virginia adjusted gross income. When the net amount of applicable modifications is added to or subtracted from federal adjusted gross income, the result is the taxpayer's West Virginia adjusted gross income. It should be noted, that in certain instances the federal tax is computed by use of the alternative capital gains tax or by allocating all or part of specific income items received in one year to one or more preceding years. Adjustments of this variety affect the computation of the federal tax itself rather than the amount of federal adjusted gross income reportable for the taxable year and are to be disregarded in computing a taxpayer's West Virginia adjusted gross income or West Virginia tax.

12.02. Depreciation. West Virginia follows the federal rules of depreciation; therefore, the depreciation of property for federal income tax purposes by methods permitted under the laws of the United States relating to the determination of income will be reflected automatically in West Virginia adjusted gross income, without modification, to the extent reflected in the taxpayer's federal adjusted gross income.

12.03. Modifications increasing federal adjusted gross income. The following items are to be added to federal adjusted gross income in arriving at West Virginia adjusted gross income of a resident individual:

(a) Interest income on obligations of any state, other than obligations of the State of West Virginia, or of a political subdivision of any other state, unless created by compact or agreement to which West Virginia is a party. The amount to be added to federal adjusted gross income is the gross amount of such interest, without reduction for incidental expenses incurred by the taxpayer; such as, custodian fees, investment advisory fees, or similar expenses.

> Example: The gross amount of interest received by a resident individual on bonds of the State of California must be added to his federal adjusted gross income in arriving at his West Virginia adjusted gross income, for this interest is subject to the West Virginia income tax but not the federal income tax. If a resident individual receives interest income on obligations of the State of West Virginia, the interest is not

subject to West Virginia income tax, for interest income on West Virginia obligations is specifically excluded from taxation by the West Virginia Income Tax Act.

(b) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes.

(c) Income taxes imposed by West Virginia or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against the federal income tax.

Example: If the New York unincorporated business income tax was deducted in computing federal adjusted gross income by a resident who incurred a liability to that state, the amount of this tax must be added back to the federal adjusted gross income as a modification item, for income taxes are not deductible for West Virginia income tax purposes. Where, however, a particular tax is not deducted in computing federal adjusted gross income but is credited against the amount of federal income tax, no modification is necessary. For example, if the amount of foreign income tax is credited against the total federal income tax of a taxpayer, no modification is to be made for the amount of such income tax credited, since it was not deducted in computing federal adjusted gross income.

(d) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from West Virginia tax, to the extent that such interest is deductible in determing federal adjusted gross income.

Example: An individual borrowed $50,000 from his bank to purchase a new issue of the United States Treasury certificates. In computing his federal adjusted gross income he includes the interest income received on these certificates and deducts as a business expense the interest payable on the bank loan. However, the interest income received on the certificates is not subject to West Virginia tax and is subtracted from federal adjusted gross income in computing his West Virginia adjusted gross income. (See subsection 12.04(a) below). Conversely, the interest on the bank loan incurred to purchase these certificates is not deductible for purposes of the West Virginia income tax and must be added back to the federal adjusted gross income in computing West Virginia adjusted gross income.

12.04. Modifications reducing federal adjusted gross income. The following items are to be subtracted from federal adjusted gross income in order to properly compute the West Virginia adjusted gross income of a resident individual:

(a) Interest income on obligations of the United States and its possessions, to the extent includible in gross income for federal income tax purposes.

Example: Interest on United States savings bonds is subject to federal income tax but not to state income tax. Therefore, the amount of such interest should be subtracted from federal adjusted gross income in computing West Virginia adjusted gross income.

(b) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States.

Example: Dividend income received from National Bank stock must be subtracted from federal adjusted gross income. Also, interest on obligations of the Home Owner's Loan Corporation must be subtracted from federal adjusted gross income as a modification item in computing West Virginia adjusted gross income of a resident individual, for an Act of Congress exempts this interest from state income taxation but not from federal income taxation. However, interest income received from a Federal Savings and Loan Association is not a proper modification and is taxable by West Virginia.

(c) If a taxpayer's federal adjusted gross income includes any gain from a sale or other disposition of property acquired prior to January 1, 1961, which had a higher fair market value on January 1, 1961, than its adjusted basis for federal income tax purposes on that date, a modification must be made to adjust for this difference.

(1) Computing the modification for difference between fair market value and federal adjusted basis. This modification is computed by subtracting from federal adjusted gross income that portion of the gain reported for federal income tax purposes which is not in excess of the difference between the higher fair market value and, the adjusted basis for federal income tax purposes, on January 1, 1961, except that if the gain is a long-term capital gain for federal tax purposes only 50% of such portion of the gain is to be subtracted. This 50% limitation applies regardless of whether any short-term capital losses were offset against the long-term capital gain in the taxpayer's federal return. The purpose of this modification is to prevent the imposition of West Virginia income tax on the property's appreciation in value prior to the effective date (January 1, 1961) of the West Virginia Income Tax Act.

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Section 12.04(c)

Example 1: A taxpayer who reported his 1961 income on a calendar year basis sold securities in 1962 and realized a gain of $3,000. However, on January 1, 1961, the fair market value of these securities was $2,000 higher than the federal adjusted basis. If this was a short-term capital gain for federal tax purposes, the amount to be subtracted from federal adjusted gross income is $2,000 being the portion of the gain not in excess of the difference between fair market value and federal adjusted basis. However, if this was a long-term capital gain for federal tax purposes, the amount to be subtracted is 50% of such portion of the gain, or $1,000.

Example 2: The taxpayer purchased XY stock in 1954 for $32,000. The fair market value of the stock on January 1, 1961, was $49,000. The taxpayer sold the stock on July 10, 1963, for $60,000. In order to determine the amount of his modification, the taxpayer should complete the ~~following~~ schedule: in Appendix E

E

SCHEDULE E MODIFICATION FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY ACQUIRED PRIOR TO JANUARY 1, 1961

Kind of Property	1. Date Acquired	2. Date Sold	3. Profit for Value	4. Market Value 1/1/61	5. Depreciation etc., to 1/1/61	6. Original Cost of Other Federal Basis	7. Total of Col. 4, plus Col. 5, Minus Col. 6	8. Modification (see instructions)
XY Stock	1954	7/10/03	28,000	49,000	—0—	32,000	17,000	8,500

Since the profit on the sale was reported on the taxpayer's federal return as long-term capital gain, 50% of the amount in column 7 is entered in column 8. The taxpayer then subtracts either his profit of the modification amount, whichever is less, from federal adjusted gross income to arrive at West Virginia adjusted gross income.

(2) No modification allowed if property acquired after December 31, 1960. If a taxpayer realizes a gain on the sale of property which he received by an acquisition other than one which gives him a substituted basis before December 31, 1960, the modification explained in this subsection is not allowed; for appreciation on such property will have occurred after the imposition of the West Virginia Income Tax Act and there is no appreciation prior to the effective date of the Act requiring exclusion.

(3) Separate computation required for each transaction. Where two or more assests are sold at a profit during the same taxable year, and the fair market value of each was higher than its federal adjusted basis on January 1, 1961, the amount to be subtracted from federal adjusted gross income must be computed separately for each asset sold.

(4) Modification not allowed where loss occurs. No modification is allowed where property was sold at a loss during the taxable year, even though such property had a higher fair market value on January 1, 1961, than the adjusted basis for federal income tax purposes on that date.

(5) Fair market value. The fair market value of stock shall be the closing price, as listed on one of the stock exchanges at the close of business on December 30, 1960 (the last day of business in 1960). The fair market value of over the counter stock shall be the bid price on the last day of business of the year 1960.

(d) Any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes. This modification applies to any refund of income taxes which was actually included in federal adjusted gross income, whether the refund represented West Virginia income taxes or the income taxes of another state, a political subdivision of any state or any foreign government. However, the modification does not include any portion of the total refund which represents interest received. Such interest whether received in connection with a state, federal or other tax refund, is not exempt from tax since it is paid on a claim against the particular government, rather than paid on an obligation thereof arising from the exercise of its borrowing powers.

12.05. Modification for West Virginia fiduciary adjustment. Where a resident individual is a beneficiary of an estate or trust, his federal adjusted gross income should be increased or decreased (as the case may be) by his share of the West Virginia fiduciary adjustment applicable to the estate or trust. This fiduciary adjustment is the net amount of modifications relating to estate or trust items of income, gain, loss or deductions, and is computed by the fiduciary in his return for the estate or trust. The fiduciary also allocates to each beneficiary his proportionate share of this fiduciary adjustment. (See section 19 of these regulations). Each beneficiary, on his individual West Virginia return, must apply his share of the fiduciary adjustment as a modification of his federal adjusted gross income in order to determine his West Virginia adjusted gross income.

12.06. Modification of federal adjusted gross income for partnership income or loss reportable by a partner. Where a resident individual is a member of a partnership, the modifications prescribed by sections 12.03 and 12.04 are to be made with reference to items of partnership income, gain, loss or deduction which are reflected in his federal adjusted gross income. These modifications are applicable, since under the West Virginia Personal Income Tax Act, each item of partnership income, gain, loss or deduction has the same character for a partner as for federal income tax purposes. If the partnership item is not characterized for federal income tax purposes it has the same character for a partner as if it were realized directly by him from the source from which realized by the partnership, or incurred by him in the same manner as incurred by the partnership. The amount of the applicable modifications for each partner should be computed in accordance with section 17 of these regulations. It should be noted that these modifications pertain to partnership items included in federal adjusted gross income; modifications to be made by a partner pertaining to items of deduction of a partnership are covered by section 15.04 of these regulations.

12.07. West Virginia adjusted gross income of a husband and wife. Where a husband and wife determine their federal income tax for a particular year on a joint return but determine their West Virginia income taxes separately, they are then required to compute their West Virginia adjusted gross income separately; that is, in the same manner as if the federal adjusted gross income of each had been determined on separate federal returns filed by them.

Section 13. West Virginia deduction of a resident individual.

13.01. After computing the West Virginia adjusted gross income of a resident individual, as described in section 12 of these regulations, there are subtracted

(a) either the West Virginia standard deduction or the West Virginia itemized deduction and

(b) his personal exemptions (See section 16 of these regulations), and the resulting balance is his West Virginia taxable income. A resident individual must take the West Virginia standard deduction, as described in section 1.14 of these regulations, unless he has itemized deductions on his federal return for the taxable year. In the latter situation, he may claim either the West Virginia standard deduction or the West Virginia itemized deduction, as described in section 1.15 of these regulations.

Section 14. West Virginia standard deduction of a resident individual.

14.01. General. A resident individual may use the West Virginia standard deduction on his state return, regardless of whether he used the standard deduction or claimed itemized deductions for the same year on his federal return. The West Virginia standard deduction of a resident individual shall be ten (10) per centum of West Virginia adjusted gross income or $1,000 whichever is less.

14.02. Husband and wife: If the taxable incomes of a husband and wife are determined separately, their standard deductions shall not exceed ten (10) per centum of the aggregate of their separate West Virginia adjusted gross incomes or one thousand dollars, whichever is less. However, the standard deduction may be taken by either or divided between them in such proportion as they may elect. If a husband and wife file separate West Virginia returns, both must use the standard deduction unless both elect to take West Virginia itemized deductions.

Section 15. West Virginia itemized deduction of a resident individual.

15.01. General. A resident individual may elect to use itemized deductions in computing his West Virginia taxable income only if he claimed itemized deductions for the same year in his federal return. The West Virginia itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modifications specified in subsection (c) below. The West Virginia itemized deduction includes such items as contributions, interest, taxes and medical expenses listed under "Itemized Deductions" in the federal return. It does not include any item deducted in computing the amount of federal adjusted gross income, e.g., business expenses deducted in computing profit or loss from a business or profession, or depreciation or repairs deducted in computing rental income. Federal itemized deductions for contributions and medical expenses are limited by a percentage of federal adjusted gross income. The West Virginia Personal Income Tax Act does not provide for any modification of these items. Therefore, the amount of the federal itemized deductions for these items is carried over into the West Virginia itemized deduction without change.

15.02. Husband and wife.

(a) a husband and wife, both of whom are required to file returns, may claim the West Virginia itemized deduction only if:

(1) Both claimed itemized deductions in their federal returns for the same year, and

(2) Both elect to use the West Virginia itemized deduction.

If either spouse is required to use, or elects to use the West Virginia standard deduction, the other spouse must also use the standard deduction.

(b) If a husband and wife file separate federal returns for any year, they must also file separate West Virginia returns, and in this case the West Virginia itemized deduction for each spouse is based upon the itemized deductions in his or her separate federal return. If a husband and wife file a joint federal return using itemized deductions, but file separate West Virginia returns, the total of their West Virginia itemized deductions is the amount of the federal itemized deduction allowable on their joint federal return, subject to the modifications described further in this section of the regulations, and this amount may be taken by either or divided between them in any manner they may elect.

15.03. Modifications reducing federal itemized deductions. The total amount of itemized deductions from federal adjusted gross income is to be reduced by the amount of the federal deductions for:

(a) Income taxes imposed by West Virginia or any other state, or by any political subdivision of a state. This modification eliminates from federal itemized deductions the amount of any income taxes included therein, regardless of the identity of the taxing jurisdiction, for the West Virginia Personal Income Tax Act does not allow income taxes to be claimed as itemized deductions.

Example: John Doe, a resident individual, itemized deductions on his federal return. Mr. Doe's itemized deductions on his federal return consisted of the following items and amounts:

(1) contributions	$ 800--
(2) interest	500--
(3) union dues	100--
(4) City of Steubenville income tax	200--
Total itemized deductions federally	$1,600--

On the taxpayer's West Virginia return, the income taxes imposed by the City of Steubenville will be a modification reducing federal itemized deductions; therefore, the taxpayer's total itemized deductions on his West Virginia return will be $1,400.

(b) Interest on indebtedness incurred or continued to purchase or carry obligations or securities, the income from which is exempt from tax under the West Virginia Personal Income Tax Act. For example, where a taxpayer borrows money to purchase new United States Treasury certificates, the interest from the certificates is subject to the federal income tax and the interest paid on the purchasing loan is an allowable itemized federal deduction. For West Virginia income tax purposes, the United States interest income is exempt and the related interest expense is not allowable as a deduction. Therefore, the United States interest income is subtracted from federal adjusted gross income in computing West Virginia adjusted gross income, by the modification under subsection 12.04(a) of these regulations, and the interest expense is subtracted from federal itemized deductions in computing the West Virginia itemized deduction.

15.04. Partners. Where a resident individual is a member of a partnerhsip and he computes his West Virginia taxable income by using itemized deductions, then his share of any partnership item of the deduction covered by the provisions of section 15.03 of these regulations is also subject to modification. The amount of the modification should be computed by the partner in accordance with the rules contained in this section of the regulations. (But see also section 17 of these regulations). In such a case, the partner should combine his share of each modification of a partnership deduction with any corresponding modification applicable to his individual federal itemized deductions.

Section 16. West Virginia personal exemptions of a resident individual.

16.01. General. A resident individual is allowed the same personal exemptions for state tax purposes as for federal tax purposes. He is allowed one West Virginia exemption of $600 for each exemption properly allowed to him for the taxable year for federal income tax purposes.

16.02. Husband and wife. Where a husband and wife file a joint federal return and also a joint state return, the same personal exemptions are allowed on the joint state return as on the joint federal return. Likewise, where a husband and wife file separate federal returns, the same personal exemptions are allowed on the separate state returns of each spouse as on the respective separate federal returns. However, if a husband and wife file a joint federal return but separate state returns, each of them is entitled to a West Virginia exemption of $600 for each federal exemption to which he or she would be separately entitled if they had filed separate federal returns.

Section 17. Resident partners.

17.01. Partner's modifications.

(a) In determining the West Virginia adjusted gross income of a resident partner, any of the modifications referred to in sections 12.03, 12.04 or 12.05 which relate to a partnership item of income, gain, loss or deduction must be made with respect to the distributive share of the partner in such item as determined for federal tax purposes. Such modification, if applicable must be made regardless of whether in the partner's federal return the partnership item is reflected in his distributive share of ordinary partnership income or is one of the items separately reported, as mentioned.

(b) If a resident partner claims the West Virginia itemized deduction, the modifications referred to in section 15.03 must also be made, if applicable. If the West Virginia standard deduction is claimed, no modification is required since itemized deductions are not taken into consideration.

(c) The modifications covered by this regulation (17) do not apply to any item which, for federal income tax purposes, is not treated as a partnership item.

(d) In determining his West Virginia adjusted gross income, a resident partner combines the modification relating to his share of any partnership item with the modification relating to any similar item from sources other than the partnership. For example, if some of the partnership income constitutes interest on bonds of another state, and the nonpartnership income of a resident member of the partnership also includes similar bond interest, he must add to his federal adjusted gross income both his distributive share of the partnership income from such bonds and the interest from similar bonds which he received individually.

(e) If a modification relates to an item that is not taken into account for federal income tax purposes; such as, interest on bonds of another state, each partner's modification relating to that item is governed by the foregoing rules. In such a case, the partner's modification is determined by his distributive share of the partnership's ordinary income or loss.

> Example: X and Y are partners in the furniture business. The Articles of Partnership provide that X is entitled to 75% and Y is entitled to 25% of the partnership profits (or losses). In 1962, the partnership received $1,200 interest income on United States obligations (Series E Bonds). This item is subject to a modification (see section 12.04(a)). The amount of each partner's modification is computed by allowing 75% to X and 25% to Y; therefore, the modification is to be distributed in the same proportion as is profit and loss. Each partner is entitled to his allocable share of modifications and claims the modification on his individual return. X will claim a $900 subtraction

modification on his West Virginia Personal Income Tax Return, and Y will claim a $300 subtraction modification on his West Virginia Personal Income Tax Return.

(f) The West Virginia long form provides the appropriate spaces to make the applicable additions and subtractions of modification items to or from federal adjusted gross income to arrive at an individual's West Virginia adjusted gross income.

17.02. Character of items. In order that the modifications may be properly applied to partnership items of income, gain, loss or deduction, whenever applicable, each of such partnership items shall have the same character for a partner under the West Virginia Personal Income Tax Act as for federal income tax purposes. Where an item is not characterized for federal income tax purposes but is reflected in the computation of the ordinary income of the partnership, the item shall have the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership. If a partnership item is not required to be taken into account for federal tax purposes (such as interest on bonds of the State of California), the character of the item for a partner for West Virginia income tax purposes is the same as if he, individually, had realized or incurred the item directly.

17.03. West Virginia tax avoidance or evasion.

(a) If a partnership agreement provides for a special allocation among the partners of any item of partnership income, gain, loss or deduction, the federal law requires that such provision with respect to partner's distributive shares be disregarded for federal income tax purposes, where the principal purpose of such provision is the avoidance or evasion of federal income tax. In such a case, each partner's distributive share of such item is determined in accordance with his share of the partnership's ordinary income or loss. This treatment and distribution of the item is reflected in each partner's federal adjusted gross income and is therefore in his West Virginia adjusted gross income, even though in a particular case no West Virginia tax avoidance or evasion may be involved.

(b) In certain cases, however, a provision for special allocation does not have as its principal purpose the avoidance or evasion of federal income tax, but has as its principal purpose the avoidance or evasion of West Virginia income tax. In such an instance, any such provision shall be disregarded and each partner's share of the pertinent item of partnership income, gain, loss or deduction shall be determined in accordance with his share of the partnership's ordinary income or loss.

(c) Whether the principal purpose of a special allocation of an item is the avoidance or evasion of West Virginia income tax depends on all the surrounding facts and circumstances.

Among the relevant circumstances to be considered are the following: Whether the partnership or a partner individually has a business purpose for the allocation; whether the allocation has "substantial economic effect", that is, whether the allocation may actually affect the dollar amount of the partner's shares of the total partnership income or loss independently of West Virginia income tax consequences; whether the related items of income, gain, loss or deduction from the same source are subject to the same allocation; whether the allocation was made without recognition of normal business factors and only after the amount of the specially allocated item could reasonably be estimated; the duration of the allocation; and the overall tax consequences of the allocation.

> Example: A and B are equal partners. However, the partnership agreement allocates to A, who is in a higher West Virginia income tax bracket than B, all interest on bonds of the State of West Virginia held by the partnership and allocates to B all interest on bonds of other states. The partnership agreement also provides that any difference in the amounts of such interest allocated to each partner is to be equalized out of other partnership income. Since the purpose and effect of this allocation is solely to reduce the West Virginia income tax of A without actually affecting the shares of A and B in partnership income, such alloca-

tion is not recognized. Accordingly, in determining their West Virginia adjusted gross income, A and B must each add to his federal adjusted gross income one-half of the interest from bonds of states other than West Virginia under section 12.03(a) of these regulations.

Section 18. West Virginia taxable income of a resident estate or trust.

18.01. General. The income of a resident estate or trust is subject to the West Virginia Personal Income Tax Act. The rates specified in section 4 and 4A of these regulations are applied against the taxable income of the estate or trust.

The West Virginia taxable income of a resident estate or trust means its federal taxable income with certain modifications. In other words, the federal taxable income of the estate or trust is the starting point for computing the West Virginia taxable income. This method of computing the West Virginia taxable income of an estate or trust applies in all cases, of which the following are examples:

(a) the computation of the West Virginia taxable income of an estate for the first taxable period thereof starting with the day following the decedent's death, and

(b) the computation of the West Virginia taxable income for the final taxable period of an estate or trust ending at the date of termination thereof.

The computation of the taxable income of a resident decendent on the final return ending with the date of his death is computed in the same manner as the taxable income of a resident individual.

18.02. Modification of federal taxable income. In order to determine the West Virginia taxable income of a resident estate or trust, three modifications must be made. These modifications are the exemption modification, the gains modification, and the fiduciary adjustment.

(a) The exemption modification. Each estate or trust is allowed a West Virginia exemption of $600, regardless of the amount of the federal exemption. An estate or trust is not allowed any exemption for dependents.

(b) Modification relating to gains on sale or other disposition of property acquired before January 1, 1961. In determining the West Virginia taxable income of a resident estate or trust, federal taxable income is reduced by the amount of the modification described in subsection 12.04(c) of these regulations. This modification applies to most capital gains of the estate or trust, since such gains are rarely included in federal distributable net income. Unless the gains are includible in the federal distributable net income, the total amount of the modification is applied against the federal taxable income of the estate or trust to determine the West Virginia taxable income. The modification provided by subsection 12.04(c) reduces the gains reported by the estate or trust for federal tax purposes from the sale of property having a higher fair market value on January 1, 1961, than the federal adjusted basis at said date. (See subsection 12.04(c) for a general discussion of this modification).

(c) Fiduciary adjustment. The applicable modifications (described in sections 12.03 and 12.04, excluding the modification described in section 12.04(c)) relating to items of income, gain or deduction may be applicable against the federal taxable income of the estate or trust in computing its West Virginia taxable income. These modifications shall be first combined in a single net amount. This amount, which may be a plus or minus, is termed the fiduciary adjustment. After this amount is computed, it is then allocated in the manner described in section 19. The amount, which is allocable to the fiduciary, is added to or subtracted from the federal taxable income of the estate or trust (depending on whether it is a plus or minus figure) to arrive at its West Virginia taxable income.

Section 19. Share of resident estate, trust or beneficiary in West Virginia fiduciary adjustment.

19.01. General.

(a) Whenever a resident estate or trust realizes items of income or gain or incurs items of loss or deductions which give rise to one or more of the modifications described in subsections 12.03, 12.04 and 15.03, an adjustment must be made to determine the West Virginia taxable income of a resident estate or trust. Also, an adjustment must be made to determine the West Virginia adjusted gross income of a resident beneficiary of any estate or trust in the amount of the share of each in the West Virginia fiduciary adjustment. For example, where an estate or trust receives interest on obligations of the United States, such interest is includible in federal gross income but is not subject to West Virginia income tax by reason of the modification provided in section 12(c)(1) of the West Virginia Income Tax Act. Where such modification is made, it becomes necessary to determine how much of the modification is to be taken into account in determining the West Virginia taxable income of the estate or trust taxable to the fiduciary and how much of the modification is to be allocated to the resident beneficiaries.

(b) This section prescribes the methods to be employed in dividing among the fiduciary and the beneficiaries, on an equitable basis, the particular items of income, gain, loss and deduction which give rise to modifications for West Virginia income tax purposes.

(c) These modifications are combined into a single net figure. This figure, which may be a plus or minus, is termed the "West Virginia Fiduciary Adjustment". After this figure is computed, it is then divided among the fiduciary and the beneficiaries in the manner described in section 19.03.

(d) The share of a resident estate or trust in the West Virginia fiduciary adjustment is then added to or subtracted from the federal taxable income of the estate or trust in arriving at its West Virginia taxable income. Similarly, the share of a resident beneficiary in the West Virginia fiduciary adjustment is then added to or subtracted from his federal adjusted gross income in arriving at his West Virginia adjusted gross income.

(e) A nonresident trust, estate or beneficiary must compute West Virginia taxable income in accordance with the provisions of section 39.

19.02. Definition of West Virginia Fiduciary Adjustment.

(a) The West Virginia fiduciary adjustment is the net amount of the modifications described in sections 12.03, 12.04 and 15.03 which relate to items of income, gain, loss or deduction of the estate or trust. However, if any of these modifications relate to the gains from the sale or other disposition of property as described in section 12.04(c) and such gains are allocated to corpus, then this modification is not included in the West Virginia fiduciary adjustment. If the gains modification under 12.04(c) is included in federal distributable net income for federal income tax purposes, then this type of modification will be included in determining the West Virginia fiduciary adjustment. However, federal distributable net income will rarely include these gains, for the gains from the sale or disposition of property are usually required to be poured over into the corpus of the trust.

Example: A resident trust had the following modifications for 1962:

Additions

(a) Interest income received on bonds of the State of California. (See section 12.03(a))	$1,500--
(b) West Virginia income tax paid in 1962. (See section 15.03(a)) . .	$ 300--
Total addition modifications	$1,800--

Subtractions

(a) Interest income received on United States government bonds. (See section 12.04(a)	$ 500--
(b) Dividends received on National Bank stock. (See section 1.12(c)(2)) .	$ 200--
Total subtraction modifications	$ 700--
West Virginia fiduciary adjustment	$1,100--

(b) Since the additions are in excess of the subtractions, the West Virginia fiduciary adjustment is a "plus" figure and is allocated among the trust and its beneficiaries as provided in sections 19.03(a) or (b), or 19.04.

(c) If, in the above example, the subtractions had exceeded the additions, the West Virginia fiduciary adjustment would be a minus figure and would be similarly allocated.

19.03. Allocation of West Virginia fiduciary adjustment between the trust and the beneficiaries.

(a) In general, the percentage share of each beneficiary and of a fiduciary of an estate or trust in the West Virginia fiduciary adjustment is equal to the percentage share of the beneficiary of the fiduciary in the federal distributable net income of the estate or trust. For exceptions to this general rule see sections 19.03(b) and 19.04.

> Example: The West Virginia fiduciary adjustment with respect to an estate is a "plus" figure of $1,000. The estate has federal distributable net income of $5,000 and makes distributions of $3,000 to A and $1,500 to B, both of whom are resident beneficiaries. The foregoing distributions are considered to be made from distributable net income for federal income tax purposes. The estate makes no other distributions during the taxable year. Since the distributions to A represent 60% of federal distributable net income, A is required to report 60% of the West Virginia fiduciary adjustment of the estate, or $600 in his West Virginia personal income tax return. Similarly, B is required to report 30% of the West Virginia fiduciary adjustment, or $300,

in his West Virginia return. The remaining 10% of the West Virginia fiduciary adjustment, or $100, is required to be reported by the fiduciary in the West Virginia fiduciary income tax return of the estate.

(1) If in the foregoing example, B were a nonresident beneficiary, the computation of the shares of the resident beneficiary A and of the fiduciary in the West Virginia fiduciary adjustment would remain the same, but the 30% allocated to B would be reported by him only to the extent provided by section 1.39 of these regulations.

(2) Where the separate shares of beneficiaries of a trust are to be treated, for federal income tax purposes, as separate trusts for the purpose of determining the amount of federal distributable net income allocable to the beneficiary and to the fiduciary, such separate shares of federal distributable net income shall determine the percentage shares of the beneficiaries and of the fiduciary in the West Virginia fiduciary adjustment.

(b) Special rule where an estate or trust has no federal distributable net income. If the federal distributable net income of the estate or trust for the taxable year is zero or a negative figure, the share of each beneficiary in the West Virginia fiduciary adjustment is in proportion to his share of the income of the estate or trust for the taxable year, determined under local law or the governing instrument. The beneficiary's share of such income consists of the amount thereof which is required to be distributed to him during the taxable year, or which is distributed to him during the taxable year although not required to be distributed currently. Any balance of the West Virginia fiduciary adjustment not so allocable to the beneficiary is allocable to the estate or trust.

Example 1. A trust has income for trust accounting purposes of $10,000. The West Virginia fiduciary adjustment with respect to the trust is a "plus" figure of $5,000. The trust pays trustee's commissions and other expenses of a formal accounting chargeable to principal which, for the purposes of this example, are deductible for federal and West Virginia income tax purposes and have the effect of reducing federal distributable net income exactly to zero.

Under the trust instrument, $4,000 of income is required to be distributed to A. An additional $3,000 is paid to A, pursuant to the discretionary authority of the trustee out of the balance of the total income of $10,000, and the remaining $3,000 is accumulated by the trust. A's $7,000 share is therefore 70% of the income for trust accounting purposes. Accordingly, A is required to add 70% of the West Virginia fiduciary adjustment of $5,000, or $3,500, to his federal adjusted gross income in determining his West Virginia adjusted gross income, as provided in section 12.05. The remaining $1,500 is the trust's share in the West Virginia fiduciary adjustment, which is required to be added to the federal taxable income of the trust in determining its West Virginia taxable income, as provided in section 18.02(c).

Example 2. The facts are the same as in Example 1 except that the West Virginia fiduciary adjustment is a "minus" figure of $5,000. In computing his West Virginia adjusted gross income, the beneficiary is therefore permitted to subtract $3,500, his share in the West Virginia fiduciary adjustment, from his federal adjusted gross income. The trust is permitted to subtract $1,500, its share in the West Virginia fiduciary adjustment, from its federal taxable income. In this particular case, the trust will derive no West Virginia taxable benefit from this subtraction except in a case where it has nondistributable capital gains or extraordinary dividends allocated to principal.

19.04. Alternative apportionment of the West Virginia fiduciary adjustment among the estate or trust and the beneficiaries.

(a) Where the methods provided in subsection 19.03 do not result in a fair and equitable apportionment of the West Virginia fiduciary adjustment, the fiduciary may, on application, adopt and use on a return for the taxable year of the estate or trust, any other method which is equitable, subject to such terms and conditions as the State Tax Commissioner may require.

(b) However, no alternative method will be approved which results in the inclusion in the West Virginia adjusted gross income of the beneficiary of an amount greater than the amount of the trust income paid, credited, or required to be distributed to such beneficiary for the taxable year.

(c) Any fiduciary whose alternative method of apportionment under this subsection is approved, must attach to the fiduciary return for the particular year a signed statement containing a summary of the facts relied upon and used to support the position that the alternative allocation, rather than the allocation prescribed in subsection 19.03 is fair and equitable.

Section 20. Credit for income tax of another state.

20.01. General. A West Virginia resident may be allowed a credit against his West Virginia income tax for any income tax imposed for the taxable year by another state or the District of Columbia, upon income derived from sources within the other state. Where a resident estate or trust receives income from another state or the District of Columbia, then the estate or trust is entitled to a similar credit, computed in the same way and subject to the same exceptions and limitations as in the case of a resident individual. However, no credit is allowed for income taxes imposed by a county, municipality, borough, township or any other political subdivision of a state.

20.02. Limitations. The amount of the credit allowed to a resident individual is subject to the following limitations:

(a) The credit allowed shall not exceed the amount of tax actually payable to the other state on income also subject to West Virginia tax.

(b) The credit shall not exceed the percentage of the West Virginia tax determined by dividing the portion of the taxpayer's West Virginia income subject to taxation in such other state by the total amount of the taxpayer's West Virginia income. For example, if the total income of a resident was $5,000, and $2,000 thereof was subject to tax by the State of New York, the amount of the West Virginia tax credit would be limited to 40% ($2,000 divided by $5,000) of the West Virginia tax.

(c) The credit shall not reduce the West Virginia tax otherwise due to an amount less than would have been due if the income subject to taxation by the other state were excluded from the taxpayer's West Virginia income. If the example above, the West Virginia tax would have been $20 less by eliminating the New York income from the income subject to West Virginia tax, the credit could not exceed $20.

Example: John Doe, a resident individual, earns $4,000 in New York during the year 1962. He also earned $8,000 in West Virginia during the year 1962. New York is a state which does not allow non-residents a credit for income taxes imposed by the state of residence; therefore, the taxpayer must look to West Virginia for the applicable credit and must claim the credit on his 1962 West Virginia Personal Income Tax Return. (See section 20.03 below).

(1) Assuming the taxpayer elects the standard deduction and has five exemptions, the applicable credit allowable to the taxpayer would be computed on his resident return as follows:

(2) On his nonresident New York return, the taxpayer computed his New York income tax on the $4,000 income derived from sources within New York to be $25.00.

(3) On his resident West Virginia return, the taxpayer computes his West Virginia income tax on the entire $12,000 income earned to be $100.00. This amount ($100.00) is the figure derived before the subtraction of any applicable credits; such as, withholding tax credits, estimated tax payments, etc. After arriving at the amount of West Virginia income tax before any applicable credits, the taxpayer must then compute his credit for income taxes imposed by another state on the appropriate schedule provided on the West Virginia form.

(4) The taxpayer's schedule for income tax imposed by another state would be computed as ~~follows:~~ appears in Appendix F

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IT-140 WEST VIRGINIA RESIDENT INCOME TAX RETURN—1963

State Tax Department
Income Tax Division

Or other taxable year beginning ________ 19__, Ending ________ 19__

PLEASE PRINT OR TYPE

First name and middle initial | Last name

If this is a joint return of husband and wife, use first names and middle initials of both

Home Address — Number and street or rural route

City, town or post office | County | State

Your Social Security Number

Occupation

Wife's Social Security Number

Occupation

Line	Description	Amount	Amount
1.	Total income (from line 15, Schedule A)		$ 12,000 00
2.	Interest income on state and local bonds other than West Virginia		
3.	Other additions (Specify)		
4.	Sum of lines 1-3		$
5.	Interest income on United States obligations	$	
6.	Modification for the sale of property (Schedule E)		
7.	Other subtractions (Specify)		
8.	Sum of lines 5-7		
9.	Line 4 less line 8 (Total West Virginia income)		$ 12,000 00
10.	Standard deduction: 10% of amount on line 9, but not in excess of $1,000		$ 1,000 00
11.	Total itemized deductions (from line 7, Schedule B)	$	
12.	West Virginia and other income taxes itemized on federal return		
13.	Line 11 less line 12	$	
14.	Interest paid to carry bonds exempt from West Virginia income tax		
15.	Line 13 less line 14 (West Virginia itemized deductions)		$
16.	Line 9 less line 10 or line 15		$ 11,000 00
17.	Exemptions: Enter number claimed on federal return 5 x$600. Total		3,000 00
18.	Line 16 less line 17 (West Virginia taxable income)		$ 8,000 00
19.	West Virginia income tax (Calculated from rate schedule on page 4)		$ 100 00
20.	West Virginia tax withheld (If joint return, enter combined total for both husband and wife. Attach IT-102(?) for total salaries or wages and the total amounts withheld.)	$ 53 00	
21.	Estimated tax payments		
22.	B&O or TP tax credits (line 6, Schedule C)		
23.	Income taxes paid other states (line 11, Schedule D)	25 00	
24.	Total payment and credits (line 20 plus 21, 22 and 23)		$ 78 00
25.	If line 19 is larger than line 24, enter the difference as BALANCE DUE (Attach remittance for full balance due payable to State Tax Commissioner)		$ 22 00
26.	If line 24 is larger than line 19, enter the difference as OVERPAYMENT (Overpayment of $1 or less is refundable only upon written request attached to return)		$
27.	Amount on line 26 is to be credited on 1964 Estimated Tax ☐		
28.	Amount on line 26 is to be refunded ☐		

NOTE: IF NO ENTRIES ARE REQUIRED ON LINES 2-4, ENTER AMOUNT ON LINE 1 ON LINE 9.

Do Not Use Space Below

A. Were you a West Virginia resident during the entire year? ☐ Yes ☐ No
If "No" give period of West Virginia residency.
From (mo., day, yr.) ________
To (mo., day, yr.) ________

B. Did you file a return last year? ☐ Yes ☐ No
If so, did you file West Virginia Short Form ☐ or Long Form ☐

C. ☐ Single ☐ Joint
If you file your federal return as "Head of household," you must file your West Virginia return as a single individual and use the rates in Schedule I, West Virginia Rate Schedule to compute your tax. If you file your federal return as "Surviving Spouse," you may file your West Virginia return as "Surviving Spouse" and use the rates in Schedule II, West Virginia Rate Schedule to compute your tax.
☐ Married filing separate returns. List Social Security number of wife (husband) ________
If name or address on this year's return is different from last year, enter name and address used last year.

I certify that this is a correct return. If prepared by a person other than taxpayer, his certification is based on all information of which he has any knowledge.

Taxpayer's signature and date (If a joint return, BOTH HUSBAND AND WIFE MUST SIGN) Wife's signature and date

Signature of preparer other than taxpayer | address | date

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Series XXI

Section 20.02(c)

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SCHEDULE A INCOME FROM FEDERAL RETURN (Enter total amount of each item)

1. Wages, salaries, tips, and other compensation.

Employer's Name	Where Employed	West Virginia Tax Withheld	Gross Wages
AB Corporation	New York, New York	$ -0-	$ 4,000 00
XY Corporation	Charleston, W. Va.	53 00	8,000 00
	Enter totals here →	$ 53 00	$ 12,000 00

2. Sick pay and employee business expense as shown on federal return	
3. Taxable compensation (Total wages or salaries, etc., less line 2)	$
4. Business profit or loss	
5. Farming profit or loss	
6. Dividend income (less federal exclusions)	
7. Interest income	
8. Capital asset gains and losses	
9. Non-capital asset gains and losses	
10. Pension and annuity income	
11. Rent and royalty income	
12. Partnership(s) income and loss	
13. Estate or trust income	
14. Other income or loss (state nature)	12,000 00
15. Total of lines 3 through 14	$

SCHEDULE B ITEMIZED DEDUCTIONS FROM FEDERAL RETURN (Enter total amount of each deduction)

1. Contributions	$
2. Interest	
3. Taxes	
4. Medical and dental expenses	
5. Casualty losses (month and year of loss ________, 19____)	
6. Other deductions	
7. Total of lines 1 through 6	$

SCHEDULE C COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION OR TRANSPORTATION PRIVILEGE TAX PAYABLE

1. Business and occupation or transportation privilege tax payable for the taxable year .... $

Business Name(s) ________ Account Identification Number(s) ________

2. West Virginia income tax (line 19, page 1)		
3. Allowable income from above business(es) included in Schedule A (See instructions)	$	
4. West Virginia total income (line 9, page 1)	$	
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)		
6. Total credit (the smallest of lines 1, 2 or 5)		$

SCHEDULE D COMPUTATION OF CREDIT FOR INCOME TAX IMPOSED BY ANOTHER STATE

1. Income tax imposed by the State of New York for the taxable year 1962	$ 25 00
2. West Virginia income tax (line 19, page 1)	100 00
3. Net income derived from above state included in West Virginia total income	4,000 00
4. West Virginia total income (line 9, page 1)	12,000 00
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)	33 33
6. West Virginia taxable income (line 18, page 1)	8,000 00
7. Alternative West Virginia taxable income (line 6 minus line 3)	4,000 00
8. Alternative West Virginia income tax (West Virginia rate schedule applied to	68 00
amount shown on line 7)	52 00
9. Limitation of credit (line 2 minus line 8)	200 00
10. Maximum credit (line 2 minus line 6 of schedule C above)	25 00
11. Total credit (the smallest of lines 1, 2, 5, 9 or 10)	$

SCHEDULE E MODIFICATION FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY ACQUIRED PRIOR TO JANUARY 1, 1961

Kind of Property	1. Date Acquired	2. Date Sold	3. Profit for Federal Return	4. Market Value 1/1/61	5. Depreciation Allowed to 1/1/61	6. Original Cost or Other Federal Basis	7. Total of Col. 4 plus Col. 5 less Col. 6	8. Modification (see instructions)

(5) After arriving at the amount at line 11 of the above schedule, the taxpayer subtracts this amount plus any other credits to which he may be entitled from his West Virginia tax before credits (line 2 above) to arrive at the amount of balance due the State of West Virginia or the amount of refund due to him, whichever the situation may be.

20.03. Exceptions to the allowance of the out-of-state tax credit. No credit shall be allowed for a tax levied by a state which allows residents of this state a credit (for the West Virginia tax) against the income tax such other state imposes. In other words, the resident credit is not allowable with respect to taxes paid to a state which allows a nonresident credit similar to that allowable by West Virginia. (See section 40). For example, the State of Maryland allows nonresidents (West Virginians) a credit for income tax imposed by their state of residence (West Virginia) on income earned in Maryland; therefore, a resident who is granted such credit by Maryland on his nonresident return is not allowed a credit by West Virginia for income tax imposed by Maryland.

20.04. Certain states do not allow West Virginia residents credit for income taxes paid their state of residence (West Virginia); therefore, West Virginia will grant the applicable credit. For a listing of the states which do not allow West Virginia residents a credit, contact the Income Tax Division.

20.05. Definition. For purposes of this section, West Virginia income means:

(a) The West Virginia adjusted gross income of an individual, or

(b) The amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his West Virginia adjusted gross income as described in section 12.

(c) West Virginia tax means the total tax payable on the West Virginia taxable income of the resident at the rate set forth in section 4 and 4A of these regulations. The West Virginia tax for the purposes of this section does not include any amounts representing interest or penalties.

(d) The tax of the other jurisdiction means the total tax imposed for the taxable year, exclusive of any interest or penalty.

(e) The term "income derived from sources within" means compensation for personal services performed in the other jurisdiction, income from a business, trade or profession carried on in the other jurisdiction and income from the ownership of real or tangible personal property situated in the other jurisdiction but not income from intangibles, except where such income is from property employed in a business, trade or profession carried on in the other jurisdiction.

SECTIONS 21 TO 30 RESERVED FOR FUTURE USE.

Section

PART III. NONRESIDENTS

Section 31. West Virginia taxable income of a nonresident individual.

31.01. General. The West Virginia taxable income of a nonresident individual shall be his West Virginia adjusted gross income less his

(a) West Virginia deduction and

(b) West Virginia exemptions. The West Virginia taxable income of a nonresident individual includes those items of income, gain, loss and deduction included in his federal adjusted gross income, derived from or connected with West Virginia sources.

The same tax rates are applied against a nonresident's West Virginia taxable income as are applied against a resident's taxable income.

31.02. Husband and wife.

(a) Where a husband and wife (both of whom are nonresidents) compute their federal taxable incomes separately on separate federal returns, they must also file separate West Virginia returns and compute their West Virginia taxable incomes separately for such year.

(b) Where a husband and wife (both of whom are nonresidents) compute their federal taxable income on a joint federal return, or if neither files a federal return, they may either

(1) determine their West Virginia taxable income jointly or

(2) determine their West Virginia taxable incomes separately.

(c) Different resident status of husband and wife. If either the husband or the wife is a resident of West Virginia and the other is a nonresident, the West Virginia taxable income of each spouse must be separately computed and stated. However, in such a case where one spouse is a resident and the other is a nonresident, they may compute a joint West Virginia taxable income by filing a joint West Virginia return, provided (1) they compute their federal taxable income on a joint federal return and (2) they elect to compute their joint combined West Virginia taxable income as if both the husband and wife were residents of West Virginia. The provisions of this subsection do not apply in those cases where either the husband or the wife separately changed his or her residence during the taxable year. Stated in another manner, this subsection applies only to those cases where one spouse was a resident of West Virginia for the full taxable year and the other spouse was a nonresident for such full taxable year.

Section 32. West Virginia adjusted gross income of a nonresident individual.

32.01. General. The computation of the West Virginia adjusted gross income of a nonresident requires a separate determination of those items of income, gain, loss and deduction entering into his federal adjusted gross income which are derived from or connected with West Virginia sources. The items thus determined are subject to the same modifications as are applicable for a resident individual under section 12.03 and 12.04 of these regulations.

(a) Items included in West Virginia adjusted gross income. The West Virginia adjusted gross income of a nonresident individual includes the net amount of income, gain, loss and deduction which enter into his federal adjusted gross income, but limited to the portions of such items derived from or connected with West Virginia sources as determined under subsection 32.02 below. In addition to the items which are received or accrued by him directly, a nonresident individual's West Virginia adjusted gross income includes

(1) his distributive share of partnership income, gain, loss and deduction described under section 37, and

(2) his share of estate or trust income, gain, loss and deductions described under section 39.

Example 1. A, a nonresident, received during 1962 the following items of income:

(1) Income from salary paid in West Virginia . . . $10,000.00

During 1962, 80% of A's working days were required to be worked inside West Virginia

(2) Distributive shares of income from a partnership carrying on business both within and without West Virginia $35,000.00

70% of the partnership income is properly allocated to West Virginia

(3) Net rental income from an apartment house located in Ohio . . . . $ 3,000.00

(4) A's share as a beneficiary under a testamentary trust. The trustee is Wheeling National Bank and all trust corpus is located within West Virginia. Income of the trust include:

Net rentals from medical office building located in Wheeling $10,000.00
A's share as 50% beneficiary . . . . $ 5,000.00

(5) Dividends from stock of a West Virginia corporation . . . . $ 6,000.00

The net amount of A's items of income and again entering into his federal adjusted gross income derived from or connected with West Virginia sources is detemined as follows:

(A) Salaries (determined with regard to days worked in West Virginia but not where payment was made) (80% X $10,000.00 = $8,000.00) . . . $ 8,000.00
(B) Partnership income (determined on the basis of the partnership's allocation) (70% X $35,000.00 = $24,500.00) $24,500.00
(C) Income from an apartment house (entirely excluded, for it is Ohio rental property) . . $ -0-
(D) Income from trust (limited to income from real or tangible personal property, see section 32.02(a)(1)) . . . . $ 5,000.00

(E) Dividend from stock of a West Virginia corporation (entirely excluded, see section 32.02(b)) . . . . $ -0-

Total $37,500.00

(b) Modifications. The modifications of federal adjusted gross income described in sections 12.03 and 12.04 which are made by a resident individual in determining his West Virginia adjusted gross income are also made by a nonresident individual when the modifications relate to income or gain derived from West Virginia sources. Modifications of a nonresident individual relating to income or gain from West Virginia sources include modifications which relate to his share of partnership income derived from or connected with West Virginia sources.

<u>Example 1</u>. In 1961, A, a resident of Ohio, earned a salary of $25,000 entirely in West Virginia. In addition, just after the first of the year, A sold for $100,000 land in West Virginia which he had purchased in 1955 at a cost of $52,000. The fair market value of the property on January 1, 1961, was $76,000. A also received $3,000 from an Ohio partnership. The partnership transacted no business within West Virginia.

A's West Virginia adjusted gross income is determined as follows:

Salary $25,000.00

Long-term capital gain on sale of land $24,000

Less		
Modification based upon section 12.04(c), reflecting 50% of the difference between A's federal basis ($52,000) and the fair market value ($76,000) of the property on January 1, 1961	($12,000)	$12,000.00
A's West Virginia adjusted gross income		$37,000.00

The gain from the partnership is disregarded because it is not connected with West Virginia sources.

32.02. Income and deductions from West Virginia sources.

(a) General. A nonresident individual's items of income, gain, loss and deduction derived from or connected with West Virginia sources are the items attributable to:

(1) the ownership of any interest in real or tangible personal property in this State; or

(2) a business, trade, profession or occupation carried on in this State; or

(3) personal services performed in this State. The determination as to whether items of income, gain, loss and deduction are derived or connected with West Virginia sources is made in accordance with subparagraphs (A) and (B) below.

(A) Items attributable to real or tangible personal property in this State. The West Virginia adjusted gross income of a nonresident individual includes items of income, gain, loss and deduction entering into his federal adjusted gross income which are attributable to the ownership of any interest in real or tangible personal property in this State. Thus, West Virginia adjusted gross income includes rental income from real or tangible personal property in this State after deducting ordinary and necessary expenses attributable to the ownership, operation or maintenance of such property. Income and deductions attributable to a lease-hold interest in property in this State are included, as well as income and deductions attributable to ownership in fee. The West Virginia adjusted gross income of a non-resident individual does not include items of income, gain, loss and deduction attributable to the ownership of any iterest in real or tangible personal property located outside this State, even though rental payments in respect of the property may be made from a point within this State by a resident individual, partnership or a corporation.

(B) Business, trade, profession or occupation carried on in this State. The West Virginia adjusted gross income of a nonresident individual includes items of income, gain, loss and deduction entering into his federal adjusted gross income which are attributable to a business, trade, profession or occupation carried on in this State.

(i) The West Virginia adjusted gross income of a nonresident individual rendering services as an employee includes the compensation for services entering into his federal adjusted gross income, but only if, and to the extent that, his services were rendered within this State. Compensation for services rendered by a nonresident individual wholly without the State is not included in his West Virginia adjusted gross income, regardless of the fact that payment may be made from a point within the State or that the employer is a resident individual, partnership or corporation.

(ii) The West Virginia adjusted gross income of a nonresident individual includes the income of a West Virginia corporation which is an electing small business corporation for federal income tax purposes.

(iii) If services are performed within West Virginia whether or not as an employee, the compensation for such services includible in federal adjusted gross income constitutes income from West Virginia sources.

(iv) Prizes, awards, and similar payments are derived from or connected with West Virginia sources as long as such gains are incident to the nonresident's presence or other activities within West Virginia.

(v) If services were performed in part within West Virginia and in part without West Virginia, the portion of the compensation attributable to the services performed within West Virginia is determined in accordance with the ratio of days worked within West Virginia to the total days worked over the period during which the compensation was earned.

Example: X, a nonresident individual, is a salaried employee of a Pennsylvania construction company. X works partly within West Virginia and partly within Pennslyvania. X earns $9,600.00 during the taxable year 1963. The amount allocable to West Virginia sources is that portion of X's salary income which the number of days worked in West Virginia bears to the total days worked during the year (excluding non-working days; such as, Saturdays, Sundays, holidays, vacations, sick leave, etc.) both within and without West Virginia. Out of a total of 280 working days, X worked 70 days within West Virginia. X determines his West Virginia income in the following manner.

Days actually worked during year in West Virginia	70
Total days worked during the year .	.280

Since the number of days worked within West Virginia amounts to 25% of X's total working days, X multiplies his total salary by 25% to arrive at the amount of his West Virginia income. His West Virginia income is $2,400.00 (25% X $9,600.00 = $2,400.00).

(vi) Pensions and retirement pay which are eligible for federal tax treatment under section 72 of the Internal Revenue Code as "amounts received as an annuity" under an annuity, endowment or life insurance contract shall be considered to be income from annuities and not taxable to nonresidents.

(b) Income from intangible personal property. Items of income, gain, loss and deduction attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, do not constitute items of income, gain, loss and deduction derived from or connected with West Virginia sources except to the extent attributable to property employed in a business, trade, profession, or occupation carried on in this State. For a nonresident individual who is a shareholder of a corporation which is an electing small business corporation for federal income tax purposes, undistributed taxable income of such corporation does constitute income or gain derived from West Virginia sources and a net operating loss of such corporation does constitute a loss or deduction derived from or connected with West Virginia sources.

(c) Deductions with respect to capital losses, net long-term capital gains and net operating losses. The deductions entering into federal adjusted gross income of a nonresident individual with respect to

(1) capital losses,

(2) 50% of the excess of the net long-term capital gains over net short-term capital losses, and

(3) net operating losses, are included in his West Virginia adjusted gross income only to the extent that such deductions relate to items of income, gain, loss and deduction derived from or connected with West Virginia sources.

Example: X, a nonresident individual, has a capital gain of $10,000 from without West Virginia and a capital loss of $5,000 from within West Virginia. Federally, X has a net capital gain of $5,000. But for West Virginia purposes X has a net capital loss of $5,000 which is subject to the $1,000 federal net capital loss limitation. The unused $4,000 West Virginia net capital loss cannot be carried over to a subsequent year since it is not deductible as a net capital loss carry-over in computing federal adjusted gross income, the starting point in the computation of West Virginia adjusted gross income of the taxpayer.

32.03. Income and deductions partly from West Virginia sources. Since the West Virginia adjusted gross income of a nonresident individual takes into account only items of income, gain, loss and deduction derived from or connected with West Virginia sources, an apportionment and allocation of items of income, gain, loss and deduction are required when a nonresident individual carries on a business, trade, profession or occupation partly within and partly without the State.

32.04. Record keeping. If the taxpayer does not maintain books and records which clearly and accurately reflect the amount of business conducted within West Virginia, he may employ any method which is fair and equitable; however, the taxpayer must make a full disclosure and explanation of such method when filing his return. If the tax commissioner deems such method of allocation and apportionment to be inequitable, the tax commissioner may prescribe any method which accurately and clearly reflects the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in West Virginia.

32.05. Purchase and sale for own account. A nonresident individual, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, is not deemed to be carrying on a business, trade, profession or occupation in this State soley by reason of the purchase and sale of property for his own account.

32.06. Husband and wife. If a husband and wife determine their federal income tax on a joint return but determine their West Virginia taxes separately, their West Virginia adjusted gross incomes are determined separately, as if they had filed separate federal income tax returns and their federal adjusted gross incomes had been determined separately.

32.07. Military pay. Compensation paid for services in the Armed Forces of the United States, performed during active duty by an individual not domiciled in this State, shall not constitute income derived from West Virginia sources. Accordingly, if an individual not domiciled in this State is a member of the Armed Forces of the United States during active duty, such compensation received by him does not constitute income derived from West Virginia sources even though the service is performed in whole or in part within this State.

Section 33. <u>West Virginia deduction of a nonresident individual</u>.

33.01. After computing the West Virginia adjusted gross income, of a nonresident individual, there are subtracted

(a) either the West Virginia standard deduction or the West Virginia itemized deductions and

(b) the taxpayer's personal exemptions and the resulting balance is his West Virginia taxable income.

The West Virginia deduction of a nonresident individual is the West Virginia standard deduction, as described in section 34; however, if he itemizes deductions on his federal income tax return for the taxable year, he may elect to claim in lieu of the standard deduction, the West Virginia itemized deduction, as described in section 35.

Section 34. West Virginia standard deduction of a nonresident individual.

34.01. A nonresident individual may use the West Virginia standard deduction, as determined under the rules in section 14 on his West Virginia return, regardless of whether he uses the standard deduction or claims itemized deductions for the same year on his federal income tax return. However, if he uses the standard deduction on his federal income tax return for the taxable year, he is required to use the West Virginia standard deduction on his State return. The West Virginia standard deduction of a nonresident husband or wife shall be determined under the rules in section 14 applicable to a resident husband or wife. The West Virginia standard deduction of a nonresident individual shall be 10% of his West Virginia adjusted gross income, or $1,000.00 whichever is less.

Section 35. West Virginia itemized deductions of a nonresident individual.

35.01. General.

(a) If a nonresident individual determines his federal taxable income by deducting itemized deductions from his federal adjusted gross income, he may either deduct his West Virginia itemized deduction or his West Virginia standard deduction from his West Virginia adjusted gross income to arrive at his West Virginia taxable income. In other words, a nonresident individual may elect to use itemized deductions in computing his West Virginia taxable income only if he claimed itemized deductions for the same year in computing his federal taxable income.

(b) Itemized deductions claimed by a nonresident individual are allowable only to the extent such deductions are attributed to or connected with West Virginia.

(c) The West Virginia itemized deduction of a nonresident individual shall be the same as the total amount of the following of his deductions from federal adjusted gross income:

(1) Contributions to this State or to any political subdivision thereof, or to any corporation, community chest, etc., organized under the laws of this State;

(2) Payments for alimony which are includible in the West Virginia adjusted gross income of the recipient;

(3) Casualty losses of realty or personalty having an actual situs within this State;

(4) Deductions, with respect to realty or personalty having an actual situs within this State, for losses incurred in any transaction entered into for profit but not connected with the taxpayer's business; and

(5) Any expense which is an allowable itemized deduction federally; such as, interest payments, medical payments, etc., and which is directly incurred within West Virginia (except deductions for income taxes imposed by West Virginia or any other taxing jurisdiction) is an allowable itemized deduction for West Virginia purposes.

(A) The total amount of the federal itemized deduction is to be reduced by the amount of the federal itemized deduction for income taxes imposed by this or any other state, or by any other taxing jurisdiction. This modification eliminates from itemized deductions for West Virginia purposes, the amount of any income taxes in the nonresident's federal deductions, regardless of the identity of the taxing jurisdiction, for the West Virginia Income Tax Act does not permit the deduction of income taxes.

(B) The total amount of the federal itemized deduction is to be reduced by the amount of any federal itemized deduction for interest on indebtedness incurred to purchase securities or obligations the income from which is exempt from West Virginia income tax.

35.02. Requirements. An itemized deduction of a nonresident individual must fulfill two requirements before the same is an allowable itemized deduction for West Virginia income tax purposes:

(a) The itemized deduction must be allowable for federal income tax purposes, and

(b) the itemized deduction must be attributed to or connected with West Virginia.

Example 1. Mr. X, a nonresident individual, contributes $300.00 to an Ohio church and $400.00 to a West Virginia church. The full amount of the contribution ($700.00) is an allowable itemized deduction for federal income tax purposes; however, only $400.00 is an allowable itemized deduction for West Virginia income tax purposes, for only $400.00 of the nonresident's charitable contribution is directly attributed to or connected with West Virginia.

Example 2. Mr. Y, a nonresident individual reported the following itemized deductions on his 1962 federal income tax return.

Contributions:		
Wheeling Baptist Church	$300.00	
Belpre, Ohio Church	150.00	
Wheeling Community Chest	50.00	$ 500.00
Interest:		
Bank of Wheeling	$150.00	
Bank of Belpre, Ohio	30.00	$ 180.00
Taxes:		
Ohio property, sales taxes, etc. .	$420.00	
West Virginia sales tax, etc. . . .	40.00	
West Virginia income tax	70.00	$ 530.00
Casualty loss:		
Flood damage to Ohio residence . .	$190.00	
Storm damage to Ohio camp	100.00	$ 290.00
Medical:		
Wheeling General Hospital	$125.00	
Belpre, Ohio Hospital	75.00	$ 200.00
Total Itemized Deductions		$1,700.00

On Mr. Y's 1962 West Virginia Nonresident Income Tax Return, he will not be allowed the full amount of his federal itemized deductions. Mr. Y will only be allowed an itemized deduction of $665.00 for West Virginia purposes, for only this amount ($665.00) was incurred within West Virginia. Mr. Y's allowable West Virginia itemized deductions are:

Contributions:		
Wheeling Baptist Church	$300.00	
Wheeling Community Chest	50.00	$ 350.00
Interest:		
Bank of Wheeling	$150.00	$ 150.00
Taxes:		
West Virginia sales tax	$ 40.00	
West Virginia income tax	70.00	$ 110.00

Medical:		
Wheeling General Hospital	$125.00	$ 125.00
Total West Virginia Itemized Deduction		$ 735.00
Less: West Virginia income tax as a modification described in subsection (5)(A) of this regulation		$ 70.00
TOTAL ALLOWABLE WEST VIRGINIA ITEMIZED DEDUCTION		$ 665.00

(c) The requirement that an itemized deduction must have been incurred within West Virginia before it is allowable applies to nonresidents only. A nonresident individual who pays his Ohio property tax through a West Virginia banking institution does not incur the expense within West Virginia, nor is the expense attributed to West Virginia.

35.03. Husband and wife.

(a) A husband and wife, both of whom are required to file West Virginia returns, may claim the West Virginia itemized deduction only if:

(1) Both claimed itemized deductions in their federal returns for the same year, and,

(2) Both elect to use the West Virginia itemized deduction. If either spouse is required to use, or elects to use the West Virginia standard deduction, the other must also use it.

(b) If a husband and wife, both of whom are required to file West Virginia returns, file separate federal returns for any year, they must also file separate West Virginia returns, and in this case the West Virginia itemized deduction is based upon those itemized deductions in his or her separate federal return. If a husband and wife, both of whom are required to file West Virginia returns, file a joint federal return using itemized deductions, but file separate West Virginia returns, then the West Virginia itemized deduction is based upon those itemized deductions in their joint federal return which are connected with West Virginia, but such deduction may be taken by either or divided between them in any manner they may elect. This election to divide itemized deductions in any manner they elect, may be made only if they filed a joint federal return.

Section 36. West Virginia personal exemptions of a nonresident individual.

36.01. General. A nonresident individual is allowed the same personal exemptions for state tax purposes as for federal tax purposes. He is allowed one West Virginia exemption of $600 for each exemption properly allowable to him for the taxable year for federal income tax purposes.

36.02. Husband and wife (both nonresidents). Where a husband and wife file a joint federal return and also a joint state return, the same personal exemptions are allowed on the joint state nonresident return as on the joint federal return. Similarly, where a husband and wife file separate federal returns, the same personal exemptions are allowed on the separate state nonresident returns of each spouse as on the respective separate federal returns. However, if a husband and wife file a joint federal return but separate state returns, each of them is entitled to a West Virginia exemption of $600 for each federal exemption to which he or she would be separately entitled if they had filed separate federal returns.

Section 37. Nonresident partners.

37.01. Partnership income and deductions derived from West Virginia sources.

(a) The West Virginia adjusted gross income of a nonresident partner of any partnership shall include his distributive share of all partnership items of income, gain, loss and deduction which enter into his federal adjusted gross income, to the extent that the amount of such items is derived from or connected with West Virginia sources; that is, from real or tangible personal property having an actual situs in West Virginia or from a business, trade, profession, or occupation carried on in this state, as determined under section 32.02 of these regulations.

(b) Where a nonresident partner elects to use itemized deductions in determining his West Virginia taxable income, there shall be attributable to him his distributable share of partnership items of deduction which, as itemized deductions, would be allowable to him under section 1.35 of these regulations. In computing the West Virginia itemized deduction under such section, the nonresident partner should consider not only the itemized deductions attributable to his distributive share of partnership items of deduction but also any nonpartnership itemized deductions to which he may be entitled.

37.02. Special rules as to West Virginia sources. In determining the sources of a nonresident partner's share of partnership income, as either within or without West Virginia:

(a) No recognition or tax effect shall be given to a provision in the partnership agreement which characterizes payments to the partner as being employee compensation or other consideration paid or distributable for services rendered to the partnership by the partner, or as being interest or other consideration paid or distrbutable for the use of capital of a partner.

(b) Similarly, no tax effect shall be given to a provision in the partnership agreement which allocates to the nonresident partner, as income or gain from sources outside West Virginia, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside West Virginia to partnership income or gain from all sources.

> Example: A is a nonresident partner of a partnership located in West Virginia, 60% of the business of which is from West Virginia sources. A's total distributive share of partnership income from all sources is $5,000. A is required to report on his West Virginia nonresident return $3,000 (60% of $5,000) as his partnership distributive share, even though, under special provisions of the partnership agreement, his share of the total West Virginia income of the partnership may have been fixed at less than $3,000. See, however, section 37.04 of this regulation for an exception.

(c) Similarly, no tax effect shall be given to a provision in the partnership agreement which allocates to the nonresident partner a greater proportion of a particular partnership item of loss or deduction connected with West Virginia sources than his proportionate share for federal income tax purposes of partnership loss or deduction generally. If, for example, the proportionate share of a nonresident partner of partnership losses is generally 50% for federal income tax purposes, he is not permitted to deduct on his West Virginia income tax return more than 50% of any particular partnership loss or deduction connected with West Virginia sources, irrespective of any special provision of the partnership agreement assigning a larger percentage of the specific loss or deduction to him. See, however, section 37.04 of these regulations for an exception.

37.03. Partner's modifications.

(a) In determining the West Virginia adjusted gross income of a nonresident partner, any modification described in subsections 12.03 Or 12.04 which relates to a partnership item shall be made with respect to the distributive share of the partner for federal income tax purposes of the related item, except as otherwise permitted under section 37.04 of this section. The modifications covered by this section do not apply to any item a nonresident himself receives or incurs directly, and this section does not apply to any item which, for federal income tax purposes, is not treated as a partnership item.

(b) The total applicable modification of any partnership item of income, gain, loss, or deduction shall be set forth on the partnership return, together with the respective portion thereof distributable to each partner. Where any particular modification pertains to an item includible in federal adjusted gross income, the partnership return shall show each nonresident's portion thereof derived from or connected with West Virginia sources.

37.04. Alternate methods. On application, the Tax Commissioner may authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with West Virginia sources as he finds are appropriate and equitable. Whenever a nonresident partner's distributive share of partnership items of income, gain, loss or deduction are so determined, any of the modifications relating thereto (see subsection (c)) shall be similarly determined.

37.05. Cross reference.

(a) For a partner's distributive share of partnership items, see subsections (b) and (c) of section 17.

(b) For the character of partnership items of a partner, see subsection (d) of section 17.

(c) For the effect of a special provision in a partnership agreement (other than a provision referred to in subsection (b) of this section) having the principal purpose of avoidance or evasion of tax, see subsection (e) of section 17.

Section 38. West Virginia taxable income of a nonresident estate or trust.

38.01. General.

(a) Taxable income of a nonresident estate or trust (like the taxable income of a nonresident individual) is subject to the West Virginia personal income tax. Nonresident estates and trust are defined in section 7 of these regulations. The rates prescribed in section 4 and 4A of these regulations are applied against the taxable income of the estate or trust. The taxable income of a nonresident estate or trust does not include the amount distributable or properly paid or credited to the beneficiaries; the latter are taxed on their distributive shares and the estate or trust is taxed on the remaining balance of the income not distributed. An estate or trust is not allowed to use the West Virginia standard deduction.

(b) The West Virginia taxable income of a nonresident estate or trust is its federal taxable income to the extent derived from or connected with West Virginia sources subject to the applicable West Virginia modifications and West Virginia exemption. Thus, subject to the applicable West Virginia modifications and West Virginia exemption, the West Virginia taxable income of a nonresident estate or trust includes its share of federal distributable income and, in addition thereto, any other items of income, gain, loss or deduction of the estate or trust recognized for federal income tax purposes but not included in federal distributable net income to the extent that such share and other items are derived from or connected with West Virginia sources.

(c) Items in distributable net income. The share of a nonresident estate or trust in the items of income, gain, loss and deduction, derived from or connected with West Virginia sources, which enter into the federal definition of distributable net income is the amount, if any, by which such items exceed the aggregate of all the beneficiaries' shares therein. The share of the nonresident estate or trust is determined in accordance with section 39 of these regulations.

(d) Items not in distributable net income. The amount of any West Virginia connected items of income, gain, loss and deduction recognized for federal income tax purposes but excluded from the federal definition of distributable net income, must be added to or subtracted from, as the case may be, the estate's or trust's share of items reflected in distributable net income. The determination of the source of such items is made in accordance with the applicable rules of sections 1.32 and 1.35 of these regulations.

(e) Modifications. In determining the West Virginia taxable income of a nonresident estate or trust, the total amount of the inclusions described in (a) and (b) of this subsection is reduced by the amount, if any, of the modification described in section 12.04(c) of these regulations, but only, however, with respect to gains from the sale or other disposition of West Virginia connected property which are excluded from the federal distributable net income of the estate or trust. This modification applies to most capital gains of the estate or trust, since such gains are rarely included in federal distributable net income.

(f) Exemption. Each estate or trust is allowed a West Virginia exemption of $600, regardless of the amount of the federal exemption. An estate or trust is not allowed any exemption for dependents. The West Virginia exemption of $600 is allowed an estate or trust even though the particular return filed may be for a taxable period of less than 12 calendar months where the election is allowable federally.

38.02. West Virginia source rules. For the purposes of this section, an item of income, gain, loss or deduction is considered derived from or connected with West Virginia sources when any such item is attributable to the ownership by the estate or trust of any interest in real or tangible personal property in this state or when the item is attributable to a business, trade, profession or occupation carried on in this state by the estate or trust, in accordance with the applicable rules set forth in sections 32 and 35 of these regulations pertaining to nonresident individuals. Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with West Virginia sources, but such West Virginia items shall otherwise be computed or determined in the same manner as the corresponding federal items.

Section 39. Share of a nonresident estate, trust or beneficiary in income from West Virginia sources.

39.01. General. The share of a nonresident estate or trust and the share of a nonresident beneficiary of any estate or trust, in estate or trust income, gain, loss and deduction from West Virginia sources shall be determined as follows:

(a) Items of distributable net income from West Virginia sources. There shall be determined the items of income, gain, loss and deduction derived from or connected with West Virginia sources which enter into the definition of federal distributable net income of the estate or trust for the taxable year (including such items from another estate or trust of which the first estate or trust is a beneficiary). Items of federal distributable net income from West Virginia sources represent items of income, gain, loss and deduction which are either attributable to the ownership by the estate or trust of any interest in real or tangible personal property in this state or attributable to a business, trade, profession or occupation carried on in this state by the estate or trust. Such determination of items from West Virginia sources shall be made in accordance with the rules prescribed in sections 32 and 35 of these regulations.

(b) Modifications. The applicable modifications, described in subsections 12.03 and 12.04 of these regulations, pertaining to items from West Virginia sources shall be first combined into a single net figure. This figure, which of course may be a plus or minus figure, is termed the net modification. After this figure is computed, it is then allocated in the manner prescribed in subsection (c) of this regulation for allocating distributable net income from West Virginia sources. However, when a West Virginia item, which would be treated as a modification, is already included in federal distributable net income, no modification which in effect would duplicate the item shall be made.

(c) Allocation among estate or trust and beneficiaries.

(1) The distributable net income of an estate or trust from West Virginia sources shall be allocated among the nonresident estate or trust and its nonresident beneficiaries in proportion to their respective shares of federal distributable net income, including, solely for the purpose of this allocation, any share of resident beneficiaries. The share of the estate or trust in federal distributable net income is the amount, if any, by which the federal distributable net income exceeds the aggregate of the shares therein of all its beneficiaries.

(2) Character of items. Each of the estate or trust items of income, gain, loss or deduction shall have the same character for West Virginia purposes as for federal income tax purposes. Where such an item is not characterized for federal income tax

purposes, the item shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust. The same is true if an estate or trust item is not required to be taken into account for federal tax purposes (such as; interest on bonds of the State of California).

39.02. Alternate methods of determining shares.

(a) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary (including, solely for the purpose of this allocation, resident beneficiaries) in the net amounts determined under subsections (a) and (b) of section 39.01 (distributable net income and net modification) shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amounts shall be allocated to the estate or trust.

(b) The tax commissioner may allow the use of other methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from West Virginia sources, and the modifications related thereto, if such other methods are fair and equitable to all parties concerned, and if a full disclosure of the adopted method is made to the tax commissioner.

Section 40. Credit for income tax of state of residence.

40.01. General.

(a) A nonresident individual, who has income derived from West Virginia sources, shall be allowed a credit against his West Virginia income tax for any income tax imposed on his West Virginia income by another state of the United States or by the District of Columbia, of which the taxpayer is a resident. Where a nonresident estate or trust is in receipt of income derived from West Virginia sources, then the estate or trust is entitled to a similar credit, computed in the same way and subject to the same limitations and exceptions as in the case of a nonresident individual.

(b) However, no credit is allowable for income taxes imposed by a county, municipality, borough, township or any other political subdivision of a state.

40.02. Limitations. The amount of the credit for any taxable year is subject to the following limitations:

(a) The credit is limited to that portion of the West Virginia income tax attributable to the income also subjected to tax by the taxpayer's state of residence.

(b) The credit shall not exceed the percentage of the other tax determined by dividing the portion of the taxpayer's West Virginia income subject to taxation in such other state by the total amount of the taxpayer's income subject to such other tax. For example: If the total income subject to such other tax was $5,000, and $2,000 thereof was derived from West Virginia sources, the amount of the credit would be limited to 40% ($2,000 divided by $5,000 of such other states tax.)

(c) The credit shall not exceed the percentage of the West Virginia tax otherwise due, determined by dividing the portion of the taxpayer's West Virginia income subject to taxation in such other state by the total amount of the taxpayer's income subject to West Virginia tax. For example: If the portion of the taxpayer's West Virginia income subject to such other tax was $1,800 and the total amount of the taxpayer's income subject to West Virginia tax was $2,000, the amount of the West Virginia credit would be limited to 90% ($1,800 divided by $2,000) of the West Virginia tax.

40.03. Exceptions to the allowance of the nonresident credit. The credit provided by this section against the tax imposed by West Virginia shall be allowed nonresidents only if the state of which the taxpayer is a resident either:

(a) Grants a substantially similar credit to that described by this section to residents of West Virginia, or

(b) Imposes an income tax on its own residents with respect to income derived from West Virginia, and exempts the income of West Virginia residents from its income tax.

40.04. The following definitions apply for the purposes of this section:

(a) West Virginia income.

(1) In the case of a nonresident individual, West Virginia income means his West Virginia adjusted gross income. (See section 32).

(2) In the case of a nonresident estate or trust, West Virginia income means the amount of income thereof determined as if the estate or trust were a non-resident individual computing his West Virginia income under section 32.

(b) West Virginia tax means the total tax payable on the West Virginia taxable income of the nonresident at the rate set forth in section 4 and 4A of these regulations. The West Virginia tax for the purpose of this section does not include any amounts representing interest or penalties.

(c) The tax of the other state means the total tax imposed for the taxable year, exclusive of any interest or penalty.

(d) The term "income derived from sources within this state" means compensation for services performed in West Virginia, income from a business, trade or profession carried on within this state and income from the ownership of real or tangible personal property situated here but not income from intangibles, except where such income is from property employed in a business, trade or profession carried on in this state.

40.05. <u>Nonresidents to which section 40 applies</u>. If a resident individual of Virginia, Maryland, or Kentucky earns income within West Virginia which is subject to taxation by his state of resident, West Virginia will grant a credit to the nonresident individual for income taxes imposed by his state of residence. For a more complete listing, contact the Income Tax Division.

SECTIONS 41 TO 50 RESERVED FOR FUTURE USE.

PART IV. RETURNS, DECLARATIONS AND PAYMENT OF TAX

Section 51. Returns and liabilities.

51.01. When the return is due. A West Virginia income tax return shall be filed on or before the fifteenth (15th) day of the fourth month following the close of the taxable year by or for the following:

(a) Every resident individual required to file a federal income tax return for the taxable year, or if the West Virginia adjusted gross income of such individual for the taxable year exceeds the sum of his West Virginia personal exemptions;

(b) Every resident estate or trust required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year;

(c) Every nonresident individual having West Virginia adjusted gross income for the taxable year in excess of the sum of his West Virginia personal exemptions;

(d) Every nonresident estate or trust having items of income or gain derived from West Virginia sources in excess of its West Virginia exemption;

(e) Every resident or nonresident individual who is entitled to and claims an overpayment for the taxable year even though he would not otherwise be required to file a return under the rules set forth in the preceding paragraphs of this subsection. For example, a taxpayer who has had West Virginia income tax withheld from his wages or has paid estimated tax during the taxable year but whose West Virginia adjusted gross income for such taxable year does not exceed his exemptions, must file a West Virginia return to obtain a refund.

A taxpayer who meets any of the requirements specified in this subsection for filing a West Virginia income tax return must file a return even if such return, after deductions, exemptions and credits, shows no tax liability.

51.02 Returns of husband and wife.

(a) Separate federal returns. If a husband or wife files and determines their tax liability on separate federal returns, they must file separate West Virginia income tax returns.

(b) Joint federal returns. If a husband and wife, other than a husband and wife described in paragraph (c) of this subsection file and determine their tax liability on a joint federal return, or if neither spouse files a federal return, they may either:

(1) File a joint West Virginia income tax return in which event their tax liabilities shall be joint and several and each is liable for the entire tax on such joint return, even though one spouse has no income, or

(2) File separate West Virginia income tax returns. In this event, their tax liabilities shall be separate.

(c) If either the husband or wife is a resident and the other is a nonresident of West Virginia, they shall file separate West Virginia income tax returns regardless of the method of filing for federal tax purposes, in which event their West Virginia tax liabilities shall be separate. However, in accordance with sections 11 and 31 of these regulations, a West Virginia joint resident return may be filed by the husband and wife provided they meet all three of the following requirements:

(1) They are otherwise entitled to file a joint return.

(2) Each spouse maintained his or her status as a resident or nonresident during the entire taxable year, and

(3) They elect to determine their West Virginia taxable income on a joint return as if both were residents for the entire taxable year.

In the event the husband and wife qualify under the above requirements and file a joint resident return, their tax liabilities shall be joint and several.

51.03. Returns for decedents. In general, the rules described in this section for filing returns apply to decedents as well as other taxpayers.

(a) The executor or administrator of the estate of a taxpayer who died during the taxable year or other person charged with the property of a decedent shall make and file the return of income required in respect of such decedent on the form which would have been appropriate had such taxpayer lived. For a decedent's taxable year which ends with the date of his death, the return shall cover the period during which he was alive. For purposes of this subparagraph, the term "executor or administrator" means the person who is actually appointed to and qualifies for such office and not a person who is merely in charge of the property of the decedent.

(b) Joint return after death. Where one or both spouses die during the year, a joint West Virginia income tax return may be made if

(1) a joint federal return was made for the taxable year,

(2) the taxable year of both decedents or of the decedent and the surviving spouse, as the case may be, began on the same day and ended on different days only because of the death of either or both,

(3) neither taxpayer was reporting for a fractional part of a year as a result of a change in accounting, and

(4) the surviving spouse had not remarried before the end of the taxable year.

51.04. Individuals under a disability. The return required for an individual who is unable to make a return by reason of minority, insanity or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent. In such case, the fiduciary or other person charged with the care of his person or property shall be liable for the tax.

51.05. Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

51.06. Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them. When the fiduciary is a trustee of two or more trusts, he must make a separate return for each trust, even though such trusts were created by the same grantor for the same beneficiary or beneficiaries.

51.07. Tax a debt. Any tax imposed by the West Virginia Personal Income Tax Act, and any increase, interest or penalty thereon, shall, from the time it is due and payable be a personal debt of the person or persons (including fiduciaries of estates or trusts) liable to pay the same, to the State of West Virginia.

51.08. Cross reference. For provisions as to information returns by partnerships, employers, and other persons, see section 58 of these regulations.

Section 52. Time and place for filing returns and paying tax.

52.01. Time for filing returns.

(a) General rule. The returns of individuals, trusts, estates or partnerships required to be made under these regulations shall be filed on or before the 15th day of the fourth month following the close of the taxable year (April 15th in the case of a calendar year taxpayer), except that where a later due date has been fixed for filing the federal return (without regard to any extension of time granted for this purpose), such later date shall apply for West Virginia tax purposes. However, in the last instance, a statement must be attached to the West Virginia return setting forth the circumstances and the authority under which the federal return was permitted to be filed on a date other than the 15th day of the fourth month following the close of the taxable year. The words "close of the taxable year" refer to and shall have the same meaning for West Virginia tax purposes as when used for federal tax purposes.

(b) Last day on a Sunday, or legal holiday. When the last day prescribed in these regulations, determined with regard to an extension of time, for filing a return, making a tax payment, or performing any act, falls on Saturday, Sunday, or a day which is a legal holiday in the State of West Virginia, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a legal holiday, or Sunday.

(c) Mailing of returns. If a return is placed in the mail, it must be postmarked on or before the 16th day of the fourth month following the close of the taxable year (April 16th in the case of calendar year taxpayer) to be timely filed.

(d) Return of a decedent. The West Virginia income tax return of a decedent for a fractional part of a year shall be due on or before April 15th, following the close of the year which began with the first day of such fractional part of the year. The due date is the same as if the decedent had lived until the end of his normal taxable year.

52.02. Place for filing returns or other documents. The personal income tax return or declaration of estimated income tax for resident and nonresident individuals, partnerships, resident and nonresident estates and trusts, must be delivered or mailed to the State Tax Commissioner, Income Tax Division, Charleston, West Virginia 25305.

52.03. Payment of taxes.

(a) Any tax under the West Virginia Personal Income Tax Act becomes due and payable on the day immediately following the close of the persons taxable year, whether the latter be the fiscal or calendar year, but remains due and payable unless paid on or before the due date fixed for filing the return thereof. Except as otherwise provided herein, a person required to make and file a return under the provisions of the West Virginia Income Tax Act shall, without assessment, notice or demand, pay in full the tax due thereon to the State Tax Commissioner on or before the due date fixed for filing such return.

(b) Method of paying tax due. The remittance (check or money order) for the balance of the tax due on the return must be made payable to the State Tax Commissioner. Postage stamps will not be accepted in payment of the tax. A cash register receipt will be issued for any payment of tax in cash which is presented in person at the Cashier Division, Office of the State Tax Commissioner, if so requested. In the case of payment made by check or money order, the cancelled remittance is usually a sufficient receipt, and an official receipt will be issued only upon request. Uncertified checks or drafts in payment of income taxes are acceptable subject to the condition that such checks or drafts may be presented for payment in accordance with the practice of the State Tax Commissioner, the State Treasury Department, and the collecting bank or banks, and provided further that the payment will not be deemed to have been made if the full amount of such check or draft is not received by the State Treasury Department. The date on which the remittance is received will be considered the date of payment so far as the taxpayer is concerned unless the check is returned because dishonored upon presentment, except when dishonored because of death of taxpayer.

Section 53. Signing of returns and other documents.

53.01. General. Each individual, including a fiduciary, shall sign any return, declaration, statement or other document which he is making or filing pursuant to requirements stated in these regulations, except that the return, declaration, statement or other document may be signed for such individual by an agent who is duly authorized to act for such person. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him.

(a) Signature by agent. When by reason of illness, absence, minority, or otherwise, the person required to make or file any return, declaration, statement or other document is unable to do so, such return, declaration, statement or other document may be made and signed by an agent, or by a guardian or other person charged with the care of the person or property of such taxpayer. Such agent assumes responsibility for making and signing the return or other document, and incurs liability for the penalties provided for erroneous, false or fraudulent returns, declarations, statements or other documents.

(b) Husband and wife signatures.

(1) A return or declaration of a husband and wife (if not made by an agent) shall be signed by both spouses. If signed by one spouse, individually

and as agent for the other, authorization for such action must accompany the return or declaration. The spouse acting as agent for the other shall, with the principal, assume responsibility for making the return and declaration and incur liability for the penalties provided for erroneous, false or fraudulent returns or declarations. However, if the signature or authorization of either the husband or the wife cannot be obtained because of illness or absence, and no power of attorney or written authorization is available for the same reason, a return or declaration signed by one spouse and offered to the State Tax Commissioner for filing as a joint return or declaration may be accepted as such if all the evidence indicates that the taxpayers intended to file it as a joint return or declaration.

(2) In the case of death of one or both spouses during the year, for which a joint return is made under the circumstances referred to in section 51.03(b) of these regulations, the signatures and evidence of authorization required under the United States Internal Revenue Code and applicable regulations for such purpose shall apply for West Virginia tax purposes.

53.02. Partnerships. Any return, statement or other document required to be made or filed by a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership and that the signature is his.

53.03. Certifications. The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to these regulations, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

53.04. Signature of preparer. If a return is prepared for a taxpayer by another person or firm (other than the taxpayer's agent referred to in section 53.01 above) for compensation, such person or firm may sign such return. This signature is in addition to the required signature of the taxpayer or his agent. If the return is prepared by a firm, such return shall be signed by the person duly authorized to act on behalf of the firm, the name of which shall be stated in conjunction with such signature. This paragraph does not apply, however, to a return prepared for an employer by an employee who is regularly and continuously employed by such employer, as, for example, a clerk, secretary or bookkeeper, nor does this paragraph apply to a person who renders mere mechanical assistance in the preparation of a return, as, for example, a stenographer or typist.

Section 54. Change of resident status during year.

54.01. General. A taxpayer who changes his residence either

(a) from West Virginia to another place, or

(b) from another place to West Virginia, during his taxable year is required to file two returns with the State of West Virginia: one return covering the period of residence, and one return covering the period of nonresidence.

If a change of residence occurred during the taxable year, and the taxpayer had no income derived from or connected with West Virginia sources during the period of nonresidence, a statement indicating he had no West Virginia income during such period may be attached to the required return in lieu of the nonresident return. This statement will serve as the return for the nonresident period only if the taxpayer had no West Virginia income during such period. For example: If an individual resided in Ohio for the first six (6) months of the taxable year and in West Virginia for the last six (6) months of the taxable year and had no West Virginia income while an Ohio resident but did have income while a West Virginia resident, a statement indicating that he had no West Virginia income while a nonresident, attached to his required resident return, will satisfy filing requirements for the nonresident portion of the year.

54.02. The provisions of the preceding paragraph are equally applicable if the taxpayer had West Virginia income while a nonresident but had no income while a resident.

Section 54.02

Husband and wife with different resident status. If a husband or wife changes his or her resident status during the taxable year, while the other spouse maintains his or her status as a resident or nonresident, as the case may be, during the entire taxable year, the spouse who changes his residence during the taxable year must, unless excused under section 54.01 of this regulation, file two returns for that year: one return for the portion of the year during which such spouse was a resident and, one return for the portion of the year during which such spouse was a nonresident. The spouse who did not change his or her residence during the taxable year must file separate West Virginia return without regard to the change made by the other spouse.

Example: X, a West Virginia resident, marries Y, an Ohio resident, on November 1, 1963, and on the same date Y moves into West Virginia to live with X. Y earned income in West Virginia after she became a resident; therefore, Y is required to file two returns with the State of West Virginia for the taxable year 1963, and X must file a separate resident return for the taxable year 1963. Each must claim his own exemption. Neither spouse may file a joint return.

54.03. West Virginia taxable income as resident and nonresident.

(a) The West Virginia taxable income for the portion of the year during which an individual was a resident shall be determined except for the special accruals in section 54.04 of this regulation, as if his taxable year for federal income tax purposes were limited to the period of his resident status. The West Virginia taxable income for the remaining portion of the taxable year during which he was a nonresident shall be determined, except for the special accruals in section 54.04 of this regulation, as if his taxable year for federal income tax purposes were limited to the period of his nonresident status.

(b) For purposes of the preceding paragraph annual limitations with respect to specific items of income, gain, loss and deduction such as divided exclusions, capital losses, medical expenses and contributions, etc., allowable for federal income tax purposes are to be applied separately to the applicable federal items attributable to the separate periods covered by the West Virginia state resident and nonresident returns required under this regulation.

54.04. Special accruals.

(a) If an individual changes his status from resident to nonresident, he must, regardless of the method of accounting he normally employs, accrue and include in his West Virginia return for the portion of the year prior to such change, any items of income, gain, loss or deduction accruing prior to the change if not otherwise properly includible or allowable for West Virginia income tax purposes for such portion of the taxable year or for a prior taxable year. That is, in computing his West Virginia taxable income for that period, he must include all the items he would be required to include if he were filing a federal return for the same period on the accrual basis, together with any other accruals such as deferred gain on installment obligations which are not otherwise includible or deductible for federal or West Virginia income tax purposes either for such period or for a prior taxable period.

(1) For example, if a taxpayer sells his business in West Virginia at a gain, under a contract whereby the purchase price is to be paid in installments, and later changes his status from resident to nonresident, he must accrue the entire amount of the gain remaining unpaid from such installment obligations, regardless of the method of accounting he normally uses in reporting his transactions. Likewise, where a beneficiary of an estate or trust changes his status during the taxable year from resident to nonresident, he must accure on his West Virginia return for the resident period any estate or trust income credited, distributable, payable or required to be distri-

buted to him as of the date of his change of residence.

(2) However, gain which is not recognized for federal income tax purposes need not be accrued for West Virginia tax purposes solely because of the change of residence. For instance, a gain realized on sale of the taxpayer's principal residence, if it is not recognized for federal tax purposes by virtue of the provisions of the Internal Revenue Code relating to acquisition of a new residence, then it need not be accured in the taxpayer's West Virginia return for the period prior to his change of residence.

(3) The amount of the accrued items shall be determined with the applicable modifications described in sections 12 and 15 of these regulations as if such accrued items were includible or allowable for federal income tax purposes.

Example: On September 10, 1963, A, a cash basis calendar year taxpayer residing in West Virginia, terminates his employment in West Virginia and moves to Florida. His salary up to the termination amounted to $8,000. On September 1, 1963, his employer notifies him that under his employment contract he will receive on October 1, 1963, a bonus of $1,000, subject to no contingencies.

On August 15, 1963, the X Corporation declares a dividend of $600, payable to A on September 20, 1963, as a stockholder of record on August 15, 1963.

On June 1, 1963, A closed title with C on a tract of vacant land in Pennsylvania, taking from C a purchase money mortgage calling for annual payments on July 1 of each year. By reason of A's federal election of the installment method of accounting with respect to this transaction, A will realize a gain of $500 each year for five years ($2,500).

On November 1, 1963, the XYZ Realty Company sells A's West Virginia residence, and A realizes a taxable gain of $3,000.

For 1963, A must file two West Virginia income tax returns: one as a resident, and one as a nonresident. On his 1963 income tax return for the portion of the year during which A was a resident, he includes in West Virginia adjusted gross income the following items:

Salary until termination	$8,000
Bonus-nonforfeitable	1,000
Dividends accrued (after exclusion) . . .	550
Gain on sale of Pennsylvania property-accrued	2,500

On his 1963 nonresident income tax return, A includes in West Virginia adjusted gross income the following item which is derived from West Virginia sources.

Gain on sale of West Virginia residence $3,000

(4) The gain from the sale of the West Virginia residence was not accruable for the portion of the year A was a resident, for the sale was made and the gain realized after A became a nonresident. Because A reports the bonus payment on his West Virginia return for the resident portion of 1963, he need not take it into account on his nonresident return as an item of income derived from West Virginia sources even though he actually receives this item of income when he is a nonresident. See subsection (c) of this regulation.

(b) If an individual changes his status from nonresident to resident, he shall make the same accruals as those set forth in subsection (c) of this regulation, except that no accrual is required for items of income, gain, loss or deduction derived from or connected with West Virginia sources. The amounts of such accrued items shall be determined with the applicable modifications described in sections 12 and 15 of these regulations as if such accrued items were includible or allowable for federal income tax purposes.

(c) No item of income, gain, loss or deduction accrued under section 54.04 of this regulation for the portion of a taxable year prior to a change of resident status is taken into account in determining West Virginia adjusted gross income or the West Virginia itemized deduction of any subsequent taxable period.

Example: A, a cash-basis calendar year taxpayer residing in Kentucky, performs services in Kentucky in March, 1961, for which he is to be paid $10,000 in September, 1961, from the employer's West Virginia office. On August 10, 1961, A moves to West Virginia where on September 1, 1961, he receives the $10,000 salary. For 1961 A is required to file two West Virginia returns, one as a nonresident and one as a resident.

No part of the $10,000 salary is taken into account as this item was accrued as of the date of change of residence.

(d) The return for the period prior to a change from resident to nonresident status may be filed without the special accruals referred to herein if the taxpayer files with the Tax Commission a bond or other security acceptable to the Tax Commission, in an amount not less than the amount of additional income tax which would be payable if no such bond or security were filed. The additional tax which is considered in determining the amount of the bond or other security which the taxpayer will be required to furnish, is computed at the rates which he would have been obliged to pay if no bond or other security had been filed, taking into account all accrued items of income, gain, loss and deduction, and resolving against him all matters in dispute affecting the amount of tax.

54.05. Minimum tax. If two returns for one taxable year are required because of a change of residence status, the tax due shall not be less than would be payable if the West Virginia taxable incomes reported on the two returns were included on a single return.

Example: X, a resident of Ohio, has West Virginia taxable income of $3,000 for the period from January 1, 1963, to April 1, 1963, on which date he becomes a resident of West Virginia. His West Virginia taxable income for the balance of 1963 if $5,000. The tax liability of X is determined as follows:

Tax as nonresident on taxable income of $3,000	$ 37.00	
Tax as resident on taxable income of $5,000	66.00	
Tentative tax	$103.00	
Tax on combined West Virginia taxable incomes ($8,000) . . .	$118.00	(Tax to be paid)

54.06. Proration. In any case where there has been a change of residence, the personal exemption and standard deduction (when the election to itemize deductions has not been made) must be prorated between the period before the change of residence and the period after the change of residence, to reflect the period of time covered by each transaction.

(a) Proration of personal exemption. The West Virginia personal exemptions must be prorated between the two returns to reflect the portions of the entire taxable year during which the taxpayer was a resident and nonresident. The proration of personal exemptions is based solely on the fractional periods of time both as a resident and as a nonresident. In other words, $600 (the amount allowable per exemption) times the number of the personal exemptions multiplied by the fractional periods of time both within and without this State equals the amount of the personal exemption on each return.

> Example 1: A taxpayer moves into West Virginia on May 1, 1963. He was a nonresident for four months and a resident for eight months during the taxable year 1963. The taxpayer has four personal exemptions. Since the taxpayer is required to file two returns with West Virginia he must prorate his personal exemptions to reflect the portions of the year he was a resident and a nonresident. To find the amount of his personal exemption on his nonresident return, the taxpayer will

multiply $600 (the amount of allowable per exemption) times 4 (the number of his personal exemptions) times 4/12 (the fractional period of nonresidence). Therefore, the amount of personal exemption on his nonresident return will be $800 ($600 X 4 X 4/12 = $800).

To find the amount of his personal exemption on his resident return, the taxpayer will use the same formula with the exception of the fractional period of time. The taxpayer will use his fractional period of residence (8/12) in place of his fractional period of nonresidence (4/12) to arrive at the proper amount for the personal exemption on his resident return. Therefore, the amount of personal exemption on his resident return will be $1,600 ($600 X 4 8/12 = $1,600).

<u>Example 2</u>: A taxpayer leaves West Virginia with his family on August 5, 1963. He has three exemptions. Since he is required to file two returns to reflect the portions of the taxable year as a resident and nonresident, he must prorate the personal exemptions. For purposes of determining the fractional period of time, a fraction of a month amounting to half a month or more is counted as a full month, and a fraction of a month amounting to less than half a month is disregarded; therefore, the taxpayer's fractional period of residence is 7/12, and his fractional period of

nonresidence is 5/12. To find the amount of his personal exemptions on his resident return, the taxpayer will multiply $600 (the amount allowable per exemption) times 3 (the number of personal exemptions) times 7/12 (the fractional period of residence). The result will be the amount of the taxpayer's personal exemption on his resident return. Therefore, the amount allowable will be $1,050 ($600 X 3 X 7/12 = $1,050). The amount of personal exemption on his nonresident return will be $750 ($600 X 3 X 5/12 = $750).

(b) Itemized deductions. If a taxpayer, who changes his residence from or to West Virginia during the taxable year, desires to itemize deductions in lieu of the standard deduction, he must itemize on both returns. However, itemized deductions are not computed on a fractional period basis as are personal exemptions.

<u>Example 1</u>: A taxpayer moves into West Virginia on July 1, 1963; therefore, he is required to file two returns for the taxable year, one return for the six month period of nonresidency and, one return for the six month period of residency. The taxpayer elects to itemize deductions in lieu of the standard deduction. The itemized deductions allowable to him on his nonresident return are only those itemized deductions which were incurred during his period of nonresidency

and which were attributable to or connected with West Virginia. Stated another way, if the taxpayer borrowed money from a West Virginia bank while a nonresident and incurred an interest liability as a result thereof; the amount of such interest is allowable as an itemized deduction on his nonresident return only. If the taxpayer had incurred an interest liability to a bank outside of West Virginia while a nonresident, the interest liability would not be allowable as an itemized deduction on his nonresident return, for such itemized deduction would not be attributable to or connected with West Virginia; nor would such itemized deduction be allowable as a deduction on his resident return, for such itemized deduction was not incurred during his period of residency. See section 35 of these regulations. If the taxpayer incurred an interest liability to a West Virginia bank during his period of residency, such interest is allowable as an itemized deduction on his resident return only. The same itemized deduction cannot be included on both returns. The itemized deductions on the two West Virginia returns will not necessarily be the same as the federal itemized deductions.

(c) Proration of standard deduction. When a West Virginia taxpayer files a return for an entire taxable year, his standard deduction is either ten percent of West Virginia adjusted gross income, or, $1,000, whichever is less. However, when two returns are required because of a change of residence, the standard deduction must be prorated between (1) the period before the change of residence and, (2) the period after the change of residence, to reflect the fractional period of time covered by each return based on the total income of the two periods which is taxable by West Virginia. Under the method of proration, a taxpayer's standard deduction for each period of time is either ten percent of the income for that particular period or the standard deduction computed on an entire year basis multiplied by the fractional portion of the year, whichever is less.

Example 1: A taxpayer has $7,000 income while a resident of West Virginia for the first six months of the taxable year. While a nonresident of West Virginia during the last six months of the taxable year, the taxpayer had $4,000 income derived from West Virginia sources. When this taxpayer filed his federal return, he was entitled to a standard deduction of $1,000 (10% of adjusted gross income or $1,000, whichever is less). The taxpayer is allowed a standard deduction of $500 on his resident return, for the standard deduction on any one return cannot be more than the standard deduction for the entire year ($1,000) multiplied by the fractional period of time (6/12); nor can the standard deduction be more than 10% of the income of that particular period of residence or nonresidence. In other words, the taxpayer's standard deduction for each period of time is the lesser of the standard deduction for the entire year multiplied by the fractional period of time or, 10% of the income of that particular period of residence or nonresidence. On his nonresident return, the taxpayer is allowed a standard deduction of $400, for 10% of the income ($4,000) from that particular period is less than the standard deduction for the entire year ($1,000) multiplied by that fractional period of time (6/12) which relates to that return.

Example 2: A taxpayer had $3,000 of income while a West Virginia resident during the first nine months of the taxable year. While a nonresident of West Virginia during the last three months of the taxable year, the taxpayer had $600 of income derived from West Virginia sources. The combined income from both periods which is taxable by West Virginia is $3,600. The standard deduction (10% of West Virginia adjusted gross income or $1,000, whichever is less) on this amount for a taxpayer filing for an entire year is $360. However, on the taxpayer's resident return, his standard deduction is $270 (9/12, the fractional period of residency, times $360, the standard deduction on an entire year basis). The taxpayer is allowed a standard deduction of $60 on his nonresident return, for 10% of the income ($600) from that particular period is less than the standard deduction for the entire year ($360) multiplied by that fractional period of time (3/12) which relates to that return. In other words, a taxpayer's standard deduction for a particular period is either the standard deduction for the entire year, multiplied by that particular fractional period of time or, 10% of the income of that particular period of residence or nonresidence, whichever is less. On the nonresident return in this example, the taxpayer's standard deduction is 10% of the income from that particular period. To arrive at the standard deduction allowable on the nonresident return in this example, the taxpayer will make two computations. He will multiply 10% times the income ($600) from that particular period and will arrive at $60. The taxpayer will then multiply that fractional period of time (3/12) by the standard deduction on the entire year basis ($360) and will arrive at $90. Since $60 is the lesser of the two, the taxpayer's standard deduction on the return for the nonresident portion of the year is $60.

Example 3: Assume the same facts as in example 2 except the taxpayer had no income attributable to West Virginia sources while a nonresident during the last three months of the taxable year. The standard deduction on his resident return will be $225 (9/12 X $300), for this amount is less than 10% times the income ($3,000) from that particular portion of the year.

The standard deduction, if used, must be used in computing the West Virginia taxable incomes for both the resident and nonresident periods.

Section 55. Declarations of Estimated Tax.

Section 55 Declaration of Estimated Tax

55.01. Requirement of Declaration.

(a) In General.

(1) Every resident and nonresident individual whose West Virginia adjusted gross income (other than from wages on which the proper amount of tax is withheld under W. Va. Code § 11-21-71) can reasonably be expected to exceed four hundred dollars ($400) shall make and file a West Virginia declaration of estimated tax for the taxable year unless:

(A) The estimated tax otherwise due in installment payments is remitted through additional withholding by the employer from the employee's wages during the taxable year; or

(B) Withholding satisfies at least eighty percent (80%) of the annual tax liability, or the amount not satisfied by withholding is two hundred dollars ($200) or less.

(2) If an individual receives income from wages subject to West Virginia withholding and other income, the total of his or her allowable exemptions can be counted only one time for purposes of determining the amount of withholding taxes and estimating the tax due on other income. In other words, the amount of West Virginia personal income taxes owed for the taxable year (determined before application of credit for employer withholding) must be prepaid either by employer withholding, installment payments, or a combination of both. Taxpayers are encouraged to increase the amount withheld from wages under W. Va. Code § 11-21-71 whenever practicable

in order to satisfy this requirement in lieu

(A) W. Va. Personal Exemptions. The West Virginia personal exemption of a resident and nonresident individual allowed by W. Va. Code § 11-21-36 is as follows:

(1) For any taxable year beginning prior to January 1, 1983, the West Virginia personal exemption is six hundred dollars ($600) for each exemption for which the taxpayer is allowed a federal exemption for the taxable year.

(2) For a taxable year beginning after December 31, 1982, but before January 1, 1984, the West Virginia personal exemption is increased to seven hundred dollars ($700).

(3) For any taxable year beginning after December 31, 1983, the West Virginia personal exemption is increased to eight hundred dollars ($800), until amended by the Legislature.

(B) Whether or not a taxpayer is required to file a federal declaration of estimated tax for the taxable year or remit installment payments of estimated federal income tax is not relevant to determining whether or not the taxpayer is required to file a West Virginia declaration of estimated tax for the taxable year.

(b) Examples. -- Application of the provisions of Section 55.01 may be illustrated by the following examples. (Applicability of any safety zones is not considered in any of these examples.) See Section 56a.05 for discussion of safety zones.

Example No. 1. -- X, a taxpayer making his return on the calendar year basis, is married and has two dependent children. X is sole proprietor of a retail business which is his only source of income. X can reasonably expect to realize $25,000 from the business during 1984, based on prior year's earnings. Therefore, X is required to make a declaration of estimated tax, for his income can be reasonably expected to exceed the sum of his personal exemptions plus four hundred dollars ([$800 x 4] + $400 = $3,600) for 1984.

Example No. 2. -- Y is a cash basis taxpayer with three exemptions including himself. Y is employed and expects to receive $23,000 subject to withholding during calendar year 1984. Also, Y expects to receive ($12,000) of income during the taxable year from the practice of a profession on his own account. Y is required to file a West Virginia declaration of estimated tax, for Y's income ($12,000) not subject to withholding exceeds four hundred dollars. The sum of his personal exemptions ($800 x 3 = $2,400) was considered in determining the amount withheld from his wages for the 1984 taxable year. Alternatively, Y could increase the amount being withheld for West Virginia personal income taxes by his employer. If the amount of estimated tax due on Y's other income is remitted through additional withholding, Y will not be required to file a declaration of estimated tax and make quarterly installment payments.

Example No. 3. -- P is a taxpayer making his return on a calendar year basis. P is engaged in the practice of his profession as a sole practitioner. He has West Virginia adjusted gross income of $2,000 from his practice for each month in the first quarter of 1984. He can reasonably expect that his West Virginia adjusted gross income from his profession will continue to average $2,000 for each month throughout the year, and that he will not have income from any other source during 1984. Since P's gross income is not subject to withholding, he is required to file a declaration of estimated tax for that year, on or before April 15, 1984. Since P's West Virginia adjusted gross income from sources other than wages subject to withholding exceeds $1,200 personal exemption plus $400), and he can reasonably expect his tax for the year to be in excess of $200, P is required to file a declaration of estimated tax for the 1984 tax year on or before April 15, 1984, and make quarterly installment payments.

Example No. 4. -- S, a married taxpayer, has been regularly employed for many years. As of January 1, 1984, his salary was $16,000 per year. S also owns stocks and other investments which he inherited when his father died in 1980, and which pay S approximately $3,000 a year. Since his West

Virginia adjusted gross income not subject to withholding taxes exceeds $400, and the sum of his personal exemptions ($800 x 2 = $1,600) was considered in determining employer withholding taxes, S is required to file a declaration of estimated tax for calendar year 1984 by April 15, 1984, unless the amount of tax remitted with his 1984 annual return will be $200 or less. Alternatively, S can avoid filing a declaration of estimated tax by increasing the amount being withheld for West Virginia personal income taxes by his employer in order to pay the amount of estimated tax that otherwise would be due in installment payments.

Example No. 5. -- T, a married person, lives in Jefferson County, West Virginia but works in Pennsylvania at an annual salary of $20,000. Pursuant to West Virginia's reciprocal exchange agreement with Pennsylvania, T's salary is exempt from Pennsylvania income tax and taxable by West Virginia. T's employer does not withhold West Virginia taxes from T's biweekly paycheck. Since T's West Virginia adjusted gross income is from salary not subject to West Virginia withholding, and will be in excess of $2,000 ([$800 x 2] + $400 = 2,000) for calendar year 1984, he is required to file a declaration of estimated tax on or before April 15, 1984, unless T's tax liability will be $200 or less.

Example No. 6. -- H is a married individual with three dependent children. H is employed at an annual salary of $18,000. His spouse, W, is employed at an annual salary of $16,000. Both salaries are subject to this State's withholding taxes, which are based on joint return rates. They have additional income of $15,000 from investments. H and W will file a joint personal income tax return for calendar year 1984. Since the amount of West Virginia adjusted gross income from sources not subject to withholding taxes is in excess of $400 and the estimated tax thereon exceeds $200, a declaration of estimated tax is required for the 1984 calendar year. Additionally, this declaration must reflect the additional taxes due on their salary income due to the higher primary tax rate on their combined West Virginia taxable incomes and the temporary surtax imposed on West

Virginia taxable income in excess of $20,000 (based on the filing of a joint return). Alternatively, and in lieu of filing a declaration estimated tax, H & W can adjust the amount of West Virginia personal income taxes being withheld by their employers so that the required amount of tax is prepaid.

Example No.7. -- Same facts as in Example No. 6. However, on July 20, 1984, W is the grand prize winner in a contest sponsored by a national magazine. The prize is an initial $5,000 plus $1,000 each month for the rest of W's life. An amended declaration of estimated tax must be filed by W (or a joint amended declaration by H and W) on or before September 15, 1984.

(c) Exemption of Spouse. -- For the purpose of determining whether a declaration of estimated tax is required under the provisions of paragraph (a) of this subsection, a married taxpayer filing a separate declaration may not take into account the exemption of his spouse, if his spouse has, or is reasonably expected to have, West Virginia adjusted gross income, or is reasonably expected to be the dependent of another taxpayer for the taxable year.

(d) Income of Child. -- In estimating the amount of West Virginia adjusted gross income for the taxable year, a parent should not include the income of his or her minor child. Such income is not includible in the gross income of the parent. See 26 U.S.C. § 73 and Treas. Reg. § 1.73-1.

(e) Partnerships. -- A partnership is not subject to tax under the West Virginia Personal Income Tax Act. See W. Va. Code § 11-21-3(b). However, partners must file declarations of estimated income tax in their individual capacity, taking into consideration their estimated distributive shares of income from the partnership.

(f) Estates and Trusts. -- An estate or trust is generally taxed as an individual. However, it is not required to file a declaration of estimated tax, or remit estimated tax in installment payments during the taxable year. Beneficiaries of estates and trusts must file declarations of estimated tax in their individual capacities and must take into consideration their estimated distributive shares of income from estates and trusts.

(g) Death of Taxpayer. -- No declaration of estimated income tax is required to be filed for a decedent subsequent to the date of his or her death. However, a short year tax return may need to be filed and interest and additions to tax may be due for any failure of the decedent: (1) to timely file a declaration of estimated tax required by W. Va. Code § 11-21-55; (2) to timely pay any installment of estimated tax required by W. Va. Code § 11-21-56; or (3) to properly estimate his or her tax. <u>See</u> Section 56.03 of these regulations relative to the making of an amended declaration by a surviving spouse if a joint declaration had been made before the death of the decedent.

(h) <u>Fiscal Year Taxpayers</u>. -- The provisons of this regulation are equally applicable to fiscal year taxpayers. <u>See</u> Section 55.10 of these regulations.

(i) <u>Declaration for Taxable Year of 52-53 Weeks</u>. -- No declaration may be made for a period of more than 12 months. For purposes of this subsection, a taxable year of 52 or 53 weeks, in the case of a taxpayer who computes his or her taxable income for federal income tax purposes in accordance with the election permitted by 26 U.S.C. § 441(f) shall be deemed a period of 12 months. A separate declaration for a fractional part of a year is required where the taxpayer has a short taxable year for federal income tax purposes.

(j) <u>When Preceding Year Was A Loss Year</u>.

(1) <u>In General</u>. -- If an individual had zero or

negative West Virginia taxable income for the preceding taxable year, a declaration of estimated tax is not required to be filed for the current taxable year until such time as the individual can reasonably estimate that his or her West Virginia adjusted gross income for the current tax year will exceed the amount of his or her allowable exemption(s) plus $400 unless the zero or negative West Virginia taxable income in the preceding taxable year was due to:

(A) the carry forward of a loss from a preceding taxable year unless the loss will also be carried forward to the current taxable year with like effect; or

(B) unusual events or occurrences not reasonably expected to affect the current taxable year with like effect.

(2) Notwithstanding the provisions of paragraph (1), above, a declaration of estimated tax is not required for the current year if the amount remitted or that should be remitted with the annual return for that year is:

(A) $200 or less; or

(B) Twenty percent (20%) or less of the tax liability for the taxable year (determined before application of any credits) for employer withholding taxes, W. Va. Code § 11-21-73, and installment payments of estimated tax.

55.02. <u>Contents of Declaration</u>.

(a) <u>In General</u>.

(1) The declaration of estimated tax by an individual shall be made on Form 140-ES.

(2) For the purpose of making the declaration, the amount of West Virginia adjusted gross income which the taxpayer can reasonably be expected to receive or accrue, depending upon the method of accounting upon which his or her taxable income is computed, and the sum of the estimated allowable deductions and credits to be taken into account in computing the amount of estimated income tax shall be determined upon the basis of the facts and circumstances existing at the time prescribed for the filing of the declaration as well as those reasonably to be anticipated for the taxable year. If, therefore, the taxpayer is employed at the date prescribed for filing his or her declaration at a given wage or salary, it should, in the absence of circumstances indicating the contrary, be presumed by him or her for purposes of the declaration that such employment will continue to the end of the taxable year at the wage or salary received by him or her as of such date. In the case of income other than wages and salary, the

expected regularity with regard to the payment of income, such as dividends, interest, rents, royalties, and estate and trust distributions, it is the responsibility of the taxpayer to estimate correctly or comply with provisions of these regulations allowing the timely filing of an annual return to be accepted as a declaration of estimated tax. In the case of a taxpayer engaged in a trade, business or profession he or she shall make an estimate of gross income, deductions and credits in the light of the best available information affecting the trade, business or profession.

(3) In determining whether or when the filing of a declaration of estimated tax is required by law and these regulations, and in determining the amount of estimated tax, the burden is on the taxpayer to show he or she complied with the law and these regulations. If, upon filing of the annual return, more than twenty percent (20%) of the taxpayer's liability is remitted or should have been remitted with the return it will be presumed that there was noncompliance. Similarly, a taxpayer's total West Virginia personal income tax liability

for the taxable year, as shown on his or her annual return for that year, will be divided by five (5) to determine whether tax was timely remitted in "equal" installment payments in compliance with the law and these regulations.

(b) Computation of Estimated Tax. -- In computing the amount of estimated tax, the taxpayer should take into account the following:

(1) The amount estimated to be the primary tax imposed by W. Va. Code § 11-21-3(a)(1) for the taxable year on the West Virginia taxable income of every individual, whether resident or nonresident, after application of any allowable amounts estimated as:

(A) Business and occupation tax credit under W. Va. Code § 11-21-8(a),

(B) Carrier income tax credit under W. Va. Code § 11-21-8(b),

(C) Credit for income tax of another state under W. Va. Code § 11-21-20,

(D) Credit for income tax of state of residence under W. Va. Code § 11-21-40, and

(E) Credit for overpayments of West Virginia personal income tax.

No consideration shall be given at this point in the computation to the credit under W. Va. Code § 11-21-73 for tax withheld on wages.

(2) The amount estimated to be the temporary surtax imposed by W. Va. Code § 11-21-3(a)(2) for the taxable year on the amount estimated in subparagraph (1), above, to be the gross primary tax for the taxable year (determined prior to and without regard to any credits reducing the gross primary tax).

(3) The amount estimated to be the minimum tax imposed by W. Va. Code § 11-21-3(a)(3) for the taxable year. The West Virginia minimum tax is twenty-five percent of the taxpayer's federal minimum or alternative minimum tax for the taxable year minus the sum of paragraphs (1) and (2).

(4) The amounts estimated by the taxpayer as the credits under W. Va. Code § 11-21-73 for tax withheld on wages.

(5) The excess, if any, of the sum of the amounts shown under subparagraphs (1), (2) and (3) of this paragraph over the amount shown under subparagraph (4) of this paragraph, which excess shall be the amount of estimated tax for the taxable year.

(c) Use of Prescribed Form. -- Copies of Form 140-ES will, so far as possible, be furnished to the taxpayer by the Tax Commissioner. A taxpayer will not be excused from making a declaration, however, by the fact that no form has been furnished to him or her. Taxpayers not supplied with the proper form should make application therefor to the Director of the Personal Income Tax Division in ample time to have their declarations prepared, verified, and filed with the Tax Commissioner on or before the date prescribed for filing the declaration. If the prescribed form is not available, a statement disclosing the amount estimated as the tax, the estimated credits, and the estimated tax after deducting such credits should be filed as a tentative declaration within the prescribed time, accompanied by the payment of the required installment. Such tentative declaration should be supplemented, without unnecessary delay, by a declaration made on the proper form.

55.03. Definition of "Estimated Tax."

(a) In General. -- In the case of an individual, the term "estimated tax" means:

(1) The amount which an individual estimates to be his or her West Virginia primary income tax liability for the taxable year (determined before any credits) in accordance with subsection 55.01 of this regulation, plus

(2) The amount which an individual estimates to be his West Virginia surtax for the taxable year, plus

(3) The amount estimated to be the minimum income tax liability for the taxable year, less

(4) The amount which he or she estimates to be the sum of any credits allowable against the West Virginia income tax, including but not limited to:

(A) Business and occupation tax credit under W. Va. Code § 11-21-8(a),

(B) Carrier income tax credit under W. Va. Code § 11-21-8(b),

(C) Credit for income tax as paid another state under W. Va. Code § 11-21-20,

(D) Credit for income tax of state of residence under W. Va. Code § 11-21-40,

(E) Credit for West Virginia income withheld from wages under W. Va. Code § 11-21-71, and

(F) Credit for overpayment of State personal income tax.

(b) Examples. -- The application of the provisions of this subsection may be illustrated by the following examples. (Applicability of any safety zones is not considered in these examples.) See Section 56a.05 for discussion of safety zones.

Example No. 1. -- B is a taxpayer with two exemptions including himself. He is a salaried employee of a corporation at an annual salary of $16,000, and West Virginia income tax is withheld from his salary. B expects $314.86 to be withheld from his wages during the taxable year 1984. B is also a partner in the XY Partnership. B expects, based on prior year's earnings, that his distributive share of partnership profits will be $5,000. The business and occupation tax is imposed against the partnership; therefore, B can reasonably anticipate a business and occupation tax credit of $50.00 against his West Virginia income tax. B will complete a West Virginia declaration of estimated tax similar to the following: See Appendix G

Section 55.03(b)

G

WEST VIRGINIA ESTIMATED TAX COMPUTATION SCHEDULE

1.	Enter total amount of income expected in current year	$21,000.00
2.	Itemized deductions or standard deduction	1,000.00
3.	Subtract line 2 from line 1	$20,000.00
4.	Enter your exemptions ($800.00 for each exemption)	1,600.00
5.	Subtract line 4 from line 3. This is your WV taxable income ...	$18,400.00
6.	Tax on amount of line 5. See tax rate schedule	500.00
*7.	Surtax is 12% of your tax liability	-0-
8.	Add line 6 to line 7. This is your WV tax liability	$ 500.00
9.	Tax expected to be withheld from wages and other credits	364.86
10.	Subtract line 9 from line 8. This is your WV estimated tax	$ 135.14

*For calendar year 1984, the surtax is 12% of your tax liability beginning with taxable income in excess of $10,000 for single and unmarried heads of household and taxable income in excess of $20,000 for joint returns. For calendar year 1983, the surtax was 9% and for calendar year 1985, the surtax will be 6%. See W. Va. Code § 11-21-3(a)(2) (1983).

Example No. 2. -- B, a self employed individual, estimates that his liability for income tax for 1984 will be $1,600. B is required to make and file a declaration of estimated tax for 1984 and pay tax in four equal installments. The declaration and first installment of $400 are due on April 15, 1984. The second, third and fourth installments are due on June 15, 1984, September 15, 1984 and January 15, 1985 respectively.

Example No. 3. -- B, a self employed individual, estimates that his liability for income tax for 1984 will be $1,600. B files a declaration of estimated tax for 1984 on April 15, 1984. B pays four installments of $400 on or before the following dates: April 15, 1984; June 15, 1984; September 15, 1984; and January 15, 1985. B's actual West Virginia tax liability for 1984 is $1,900. B does not fall within the $200 safety zone. However, since B prepaid in installment payments at least 80% of hisl 984 tax liability, he will not be penalized for underestimating ($1,900 x 80% = $1,520 x 1/4 = $380). B falls within the 80% safety zone since he prepaid in quarterly installments of $400 each. Therefore, no additions to tax or interest is due on the amount of tax paid with B's annual return filed April 15, 1985.

Example No. 4. -- C, a self employed individual, estimates that his liability for West Virginia personal income tax for 1984 will be $1,200. C files a declaration of estimated tax for 1984 on April 15, 1984. C also pays four installments of $300 each. However, C's actual West Virginia tax liability for 1984 is $1,600. Since C did not prepay at least 80% of his tax liability, interest and additions, to tax will be due on the amount remitted with his annual return on April 15, 1985.

(1) Total tax due for the year $1,600

(2) 80% of line (1) $1,280

(3) Line (2) ÷ number of installments $ 320

(4) The quarterly underpayment is the excess of line (3) over the actual amount paid or credited toward that installment. ($320 - 300 = $20 each installment X 4 = $80)

Therefore, C can be assessed penalty and interest for underpayment of estimated tax ($1,600 X 80% = $1,280 x 1/4 = $320). Interest and additions to tax are calculated based on the date the tax should have been remitted. In this example only $300 was paid each quarter instead of the $320 that was actually due. The amount remitted balance due with the annual return was $400. This is more than both $200 and 20% of his total tax for the year.

55.04. Joint Declaration of Husband and Wife.

(a) In General. -- A husband and wife may make a joint declaration of estimated income tax as if they are one taxpayer, even though they are not living together, except as provided in paragraph (b). A joint declaration may be made even though one spouse is expected to have no income during the taxable year. If a husband and wife make a joint declaration, their liability with respect to the estimated tax shall be joint and several.

(b) Exceptions. -- A joint declaration of estimated income tax may not be made if the husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. Also, joint declaration of estimated tax may not be filed if the husband and wife do not have the same residence status unless both elect to determine their joint West Virginia taxable incomes as if both were residents. See W. Va. Code § 11-21-11(b)(3).

(c) Application to Separate Returns. -- The fact that a joint declaration of estimated income tax is made by a husband and wife will not preclude them from electing to determine their West Virginia income taxes on separate annual returns. In case a joint declaration is made but a joint annual return is not made for the same taxable year, the installment payments of estimated tax for such year may be treated as payments on account of the tax liability of either the husband or wife for the taxable year or may be divided between them in such manner as they may agree. One spouse may claim the amount of estimated tax paid during the year. If the husband and wife do file separate returns, the spouse claiming the estimated tax paid, or each spouse if each claims a portion of the estimated tax paid, must make a notation on his or her West Virginia income tax return to the effect that the estimated tax paid was by a joint declaration. In the event the husband and wife fail to agree to a division, such payments shall be allowed between them in accordance with the following rule. The portion of such payments to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax imposed by W. Va. Code § 11-21-3 shown on the separate return of the taxpayer bears to the sum of the taxes imposed by § 11-21-3 shown on the separate returns of both the taxpayer and his or her spouse. For example, assume that for calendar year 1982 H and his spouse, W, make a joint return of estimated tax and pursuant thereto, pay a total of $900 of estimated tax. H and W subsequently file separate returns for 1982 showing tax imposed by W. Va. Code § 11-21-3 in the amount of $548 and $450 respectively. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is computed as follows:

(1) Amount of tax imposed by W. Va. Code § 11-21-3 as shown on H's return........ $548

(2) Total taxes imposed by W. Va. Code § 11-21-3 as shown on W's return.........$450

(3) Total taxes imposed as shown on both H's and W's returns......................$998

(4) Proportion of taxes on H's return to the total amount of taxes shown on both returns. ($548 ÷ 998)...........54.90%

(5) Amount of estimated tax payments allocated to H......................$494.10

Accordingly, H's return would show remaining tax liability in the amount of $53.90 ($548 taxes shown less than $494.10 estimated tax allocated.)

(d) Death of Spouse.

(1) A joint declaration may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving

spouse to assume that there will be filed a joint return for himself and the deceased spouse for his taxable year and the last taxable year of the deceased spouse he may, in making a separate declaration for his taxable year which includes the period comprising such last taxable year of his spouse, estimate the amount of tax imposed by W. Va. Code § 11-21-3 on his and his spouse's taxable income on an aggregate basis and compute his estimated tax in the same matter as though a joint declaration had been filed.

(2) If a joint declaration is made by a husband and wife and thereafter one spouse dies, no further payments of estimated tax on account of the joint declaration are required from of the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax unless an amended declaration setting forth the separate estimated tax for the taxable year is made by the surviving spouse. Such separate estimated tax

shall be paid at the times and in the amounts determined under the rules prescribed in Section 56 of these regulations. For the purposes of making the amended declaration by the surviving spouse, and for the allocation of payments made pursuant to a joint declaration between the surviving spouse and the legal representative of the decedent in the event a jointreturn is not filed, the payments made pursuant to the joint declaration may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree. In the event the surviving spouse and the legal representative of the decedent fail to agree to a division, such payments shall be allocated in accordance with the following rule. The portion of such payments to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax imposed by W. Va. Code § 11-21-3 shown on the separate return of the surviving spouse bears to the sum of the taxes imposed by W. Va. Code § 11-21-3 shown on the separate returns of the surviving spouse and of the decedent; and the balance of such payments shall be allocated to the decedent. This rule may be illustrated by analogizing the surviving spouse described in this rule to H in the example contained in paragraph (c) of this subsection and the decedent in this rule to W in that example.

(e) Signing of Joint Declaration. -- A joint declaration of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses. The provisions of Section 55.12, relating to returns made by agents shall apply where one spouse signs a declaration as agent for the other or where a third party signs a declaration as agent for both spouses. See W. Va. Code § 11-21-53.

55.05. Time for Filing Declaration.

(a) In General. -- A declaration of estimated income tax of an individual, other than a farmer, shall be filed on or before April 15th of the taxable year, except that if the requirements of subsection 55.01 of these regulations are first met:

(1) After April 1st and before June 2nd the taxable year, the declaration shall be filed on or before June 15th or

(2) After June 1st and before September 2nd of the taxable year, the declaration shall be filed on or before September 15th, or

(3) After September 1st of the taxable year, the declaration shall be filed on or before January 15th of the succeeding year. See W. Va. Code § 11-21-55(d).

(b) Exceptions. -- A declaration of estimated tax need not be filed for the taxable year if:

(1) At least eighty percent (80%) of the annual tax liability is satisfied by withholding; or

(2) The amount of taxes due for the taxable year that will be remitted (or should be remitted) with the annual return is two hundred dollars ($200) or less.

See Section 55.07 of these regulations.

(c) Optional Rule for Farmers. -- *See* Section 55.06 of these regulations.

(d) Fiscal Year Taxpayers. -- An individual's tax year for purposes of this tax shall be the same as his or her taxable year for federal income tax purposes. *See* W. Va. Code § 11-21-6(a). Fiscal year taxpayers, except farmers, shall file declarations of estimated tax in accordance with Section 55.10 of these regulations.

55.06. Declarations of Estimated Tax by Farmers.

(a) In General.

(1) In the case of an individual on a calendar year basis, if that individual expects to derive at least two-thirds of his or her estimated West Virginia adjusted gross income from farming, he or she may file a declaration of estimated income tax at any time on or before January 15th of the succeeding year in lieu of the time for filing set forth in W. Va. Code § 11-21-55(d). See W. Va. Code § 11-21-55(e).

(2) "Farming" Defined. -- Income is attributable to farming if it is obtained from cultivation of the soil, the raising or harvesting of any agricultural or horticultural commodities, the raising, etc., of livestock, bees, poultry, fur-bearing animals, or wildlife. In other words, the requisite percentage of West Virginia adjusted gross income must be derived from the operation of a stock, dairy, poultry, fruit or truck farm. If an individual receives for the use of his or her land income in the form of a share of the crops produced thereon, such income is from farming.

(b) Fiscal Year. -- In the case of an individual on a fiscal year basis, if that individual expects to derive at least two-thirds of his or her estimated West Virginia adjusted gross income for farming, he or she may file a declaration of estimated income tax at any time on or before the 15th of the first month of the succeeding year.

(c) Joint Return. -- If a joint declaration of estimated tax will be filed by a husband and wife, at least two-thirds of their combined estimated West Virginia adjusted gross income must be from farming before that declaration may be filed under paragraph (a) or (b). Otherwise, the rules of Section 55.05 of these regulations shall be followed.

55.07. <u>Automatic Extension of Time for Filing Declarations of Estimated Tax</u>.

(a) <u>In General</u>. -- If an individual determines that his or her estimated income tax, as defined in Section 55.03, for the taxable year is two hundred dollars ($200) or less, or that the amount of tax to be remitted with his or her annual return for the taxable year will be twenty percent (20%) or less of the amount of tax shown (or that should have been shown) to be due on the annual return for the taxable year determined before application of credits for employer withholding taxes, W. Va. Code § 11-21-73, and installment payments of estimated tax, whichever is greater, he or she is only required to file an annual return for the taxable year and pay the amount of tax shown thereon to be due, on or before April 15th of the succeeding tax year. For this purpose, all eligible taxpayers are granted an automatic extension of time from the date when the declaration of estimated tax and installment payments would otherwise be lawfully due until April 15th of the next tax year. <u>See</u> W. Va. Code §§ 11-21-55 and 11-21-57.

(1) A husband and wife who file a joint declaration of estimated tax or a joint annual return are treated as one individual for purposes of paragraph (a).

(2) An individual with estimated tax in excess of $40 would in the absence of paragraph (a) be required to file his or her declaration of estimated tax as provided in Section 55.05 of these regulations.

(3) An individual with estimated tax of $40 or less would in the absence of paragraph (a) be required to file his or her declaration of estimated tax on or before January 15th of the succeeding tax year. See W. Va. Code § 11-21-55(h).

(b) Interest and Additions to Tax.

(1) If the amount remitted with the annual return is two hundred dollars ($200) or less, or if one of the safety zones applies (See Section 56a.05) no interest or additions will begin to accrue on the amount due until April 16th of the succeeding tax year (16th day of the 4th month of the succeeding tax year if filing on a fiscal year basis).

(2) If the amount remitted with the annual return exceeds two hundred dollars ($200) and if none of the safety zones apply (See Section 56a of these regulations), interest and additions shall be imposed and shall be calculated from the date when the declaration of estimated tax and the

first installment payment should have been remitted. Interest and additions to tax shall similarly be applied to any subsequent installment payments that should have been remitted, calculated from the date such installments should have been paid.

(3) See Sections 56a.01, 56a.03, 56.a.04 and 56a.05 of these regulations for application and computation of interest and additions to tax and application of safety zones.

55.08. Amendment of Declaration.

(a) In General. -- In making a declaration of estimated income tax, the taxpayer is required to take into account the then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective West Virginia adjusted gross income, allowable deductions and estimated credits for the taxable year. Amended or revised declarations may be made in any case in which the taxpayer estimates that his or her West Virginia adjusted gross income, deductions or credits will differ from the West Virginia adjusted gross income, deductions or credits reflected in the previous declaration. An amended declaration may also be made based upon a change in the number of exemptions to which the taxpayer may be entitled for the current taxable year. However, only one amended declaration may be filed during the interval between installment dates and no further amendment may be made until a succeeding installment date. An amended declaration may be filed jointly by husband and wife even though separate declarations have previously been filed.

(b) Payments. -- Subsequent installment payments shall be proportionally increased or decreased based on the amended declaration. No refund will be issued due to the filing of an amended declaration. Consideration will be given to a refund only in connection with a completed annual return filed by a taxpayer for the taxable year covered by his or her declaration, and/or amended declaration.

(c) Time for Filing Amended Declaration. -- An amended declaration of estimated income tax may be filed on or after an installment date prescribed for the taxable year. However, no amended declaration may be filed until after the original declaration has been filed, and only one amended declaration may be filed during any interval between installment due dates.

(d) Forms. -- An amended declaration shall be made on Form 140-ES clearly marked "AMENDED". If the proper form is not available, the procedure outlined in subsection 55.01 of these regulations must be followed.

55.09. Return as Declaration or Amendment.

(a) In General. -- If the annual return of the taxpayer is filed as hereinafter provided, the annual return may be treated as the declaration or amended declaration of estimated tax.

(b) Time for Filing Return.

(1) Return as declaration; February 15th. If the taxpayer files his or her return for the calendar year on or before Februrary 15th of the succeeding calendar year (or if the taxpayer is on a fiscal year basis, the 15th day of the second month) and pays therewith the full amount of the tax shown to be due on the return, then such return shall be considered as the taxpayer's declaration if the declaration is not required to be filed during the taxable year, but is otherwise required to be filed on or before January 15th of the succeeding year (or the 15th day of the first month in the case of a fiscal year). See W. Va. Code §§ 11-21-55(h) and 11-21-55(i).

(2) Return as amendment of declaration; January 15th. If the taxpayer files his or her return for the calendar year on or before January 15th of the succeeding calendar year (or if on a fiscal year basis, the 15th day of the first month), and

pays therewith the full amount of the tax shown to be due on the return, then if a declaration was filed during the taxable year, such return shall be considered as the amendment of the declaration if the tax shown on the return is greater than the estimated income tax shown in the declaration. See W. Va. Code §§ 11-21-55(h) and 11-21-55(i).

(3) Examples.

Example No. 1. -- An individual taxpayer on the calendar year basis who, subsequent to September 1, 1982, first meets the requirements of subsection 55.01 of these regulations for filing a declaration for 1982, may satisfy such requirements by filing his or her return for 1982 on or before February 15, 1983, and paying in full at the time of such filing the tax shown thereon to be payable.

Example No. 2. -- Similarly, if a taxpayer files on or before September 15, 1983, a timely declaration for such year and on or before January 15, 1984, files a 1983 return on which the tax shown is than the estimated income tax shown on such declaration, and pays at the time of such filing the tax shown by the return to be payable, such return shall be treated as the amended declaration permitted to be filed on or before January 15, 1984. See also subsections 55.05 and 55.06 of these regulations regarding the time for filing a declaration of estimated tax by a farmer and by an individual having total West Virginia estimated income tax of $200 or less.

(c) Interest and Additions to Tax.

(1) Compliance with the provisions of W. Va. Code § 11-21-55(h) will enable a taxpayer to avoid paying interest and additions to tax with respect to an underpayment of the installment not required to be paid until January 15th of the succeeding calendar year.

(2) With respect to an underpayment of any earlier installment, compliance with section 11-21-55(h) will not relieve the taxpayer from the interest imposed by W. Va. Code § 11-21-16 and the additions to tax imposed by section 11-10-18. However, the period of the underpayment with respect to an earlier installment will terminate on January 15th of the succeeding calendar year.

(3) Example. -- A taxpayer discovers on January 10, 1984, that he underpaid his estimated tax for the calendar year 1983. He may in lieu of filing the amended declaration on January 15, 1984, file his annual return on Janaury 15th, and pay in full the amount computed thereon as payable. By so doing he will avoid the interest and additions to tax with respect to the installment payment that was due January 15, 1984. The periods of underpayment of the installments due April 15, 1983, June 15, 1983, and September 15, 1983, will also terminate on January 15, 1984.

(4) See Section 56a.05 of these regulations for application of safety zones.

55.10. <u>Fiscal Year Taxpayers</u>. -- In the case of individuals on a fiscal year basis, other than those referred to in Sections 55.06 and 55.07 of this regulation, the declaration must be filed on or before the 15th day of the fourth month of the taxable year. The provisions of this section and of section 56 of these regulations shall apply to a taxable year other than a calendar year by the substitution of the corresponding fiscal year months for the calendar year months referred to in this section. <u>See</u> W. Va. Code § 11-21-6 relating to accounting periods and tax years.

55.11. <u>Short Taxable Periods</u>.

(a) <u>In General</u>. -- If a taxpayer is required to make a declaration of estimated income tax pursuant to Section 55.01 of this regulation, and a short taxable year is involved, a separate declaration for such fractional part of the year is required, except as hereinafter noted. <u>See</u> W.Va. Code § 11-21-55(j).

(b) <u>Income and Income Tax Placed on Annual Basis</u>.

(1) In order to determine whether a declaration of estimated tax needs to be filed for a short taxable year, West Virginia adjusted gross income and the taxes imposed by W. Va. Code § 11-21-3 shall be placed on an annual basis in the manner prescribed in 26 U.S.C. § 443(b)(1).

(2) <u>Example</u>. -- A taxpayer changes from a calendar year to a fiscal year basis beginning July 1st. The taxpayer will have a short taxable year beginning January 1st, and ending June 30th. The anticipated West Virginia adjusted gross income (excluding wages on which tax is withheld) for such short taxable year is $3,000. His West Virginia adjusted gross income for the purpose of determining whether a declaration is required is $6,000, which is the amount obtained by placing the anticipated income of $3,000 upon an annual

basis ($3,000 multiplied by 12 and divided by 6).

(c) Four Months or Less. -- No declaration is required if the short taxable year is a period of less than four months or the estimated tax liability for the year is $200 or less or one of the safety zones applies.

(d) Time for Filing.

(1) General. -- In the case of a short taxable year, the declaration shall be filed by individuals (other than those referred to in Section 55.05 and 55.06 of these regulations) on or before the 15th day of the fourth month of such taxable year. If the requirements prescribed in Section 55.01 of these regulations are first met after the first day of the fourth month but before the second day of the sixth month, the declaration must be filed on or before the 15th day of the sixth month. If the requirements of Section 55.01 are first met after the first day of the sixth month but before the second day of the ninth month, the declaration must be filed on or before the 15th day of the ninth month.

(2) Short Year of More Than Six but Less Than Nine Months. -- If, however, the period for which the declaration is filed is at least six months

but less than nine months and the requirements of Section 55.01 of these regulations are not met until after the first day of the fourth month, the declaration may be filed on or before the 15th day of the succeeding taxable year.

(3) Short Year of More Than Nine Months. -- If, however, the period for which the declaration is filed is for nine months or more and such requirements are not met until after the first day of the sixth month, the declaration may be filed on or before the 15th day of the succeeding taxable year.

55.12. Declaration Made by Agent For Individual Under Disability.

(a) In General. -- The declaration of estimated tax for an individual who is unable to make a declaration by reason of minority, disease, injury, or other disability may be made and filed by his or her guardian, committee, fiduciary or other person charged with care of the individual or his property (other than a receiver in possession of only a part of his property), or by his or her duly authorized agent in accordance with subsection (b). See. Va. Code § 11-21-55(k).

(b) Procedure.

(1) General. -- Whenever a declaration is made by a duly authorized agent, it must be accompanied by a power of attorney (or copy thereof) authorizing the agent to represent his or her principal in making, executing, or filing the declaration. A copy of Federal Form 2848, when properly completed, is sufficient, and in the case of a court appointed agent, a copy of the court order of appointment is sufficient.

(2) Disabled Spouse. -- Where one spouse is physically unable by reason of disease or injury to sign a joint declaration, the other spouse may,

with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place in the declaration followed by the words "By..............Husband (or Wife)," and by the signature of the signing spouse in his or her own right, provided that a dated statement signed by the spouse who is signing the declaration is attached to and made a part of the declaration stating:

(A) The name of the declaration being filed,

(B) The taxable year,

(C) The reason for the inability of the spouse who is incapacitated to sign the declaration and

(D) That the spouse who is incapacitated consented to the signing of the declaration.

(c) Liability of Taxpayer and Agent.

(1) The taxpayer and his or her agent, if any, are responsible for the declaration as filed and incur liability for any penalties for false, or fraudulent declarations.

(2) "Agent" defined. For purposes of this section, the term "agent" includes guardian, committee, fiduciary or other person charged with

care of the individual under a disability, and a duly authorized agent of the taxpayer.

(d) Example. -- X, a calendar year taxpayer, leaves for Europe on February 1, 1983, and expects to return to the United States sometime in June. Since X will be out of the country on April 15th, his or her declaration of estimated tax for the 1983 taxable year may be filed by an authorized agent.

Section 56. Payment of Estimated Tax.

56.01. General.

(a) Manner of Payment. -- The amount of estimated income tax due as shown on a declaration of estimated income tax may be paid in installments or, at the election of the taxpayer, may be paid in full at the time of filing the declaration. If the estimated income tax is paid in installments, the first payment must accompany the declaration. See W. Va. Code § 11-21-56. Special rules regarding payment of 1983 estimated taxes are provided in Section 56.09.

(b) Installment Dates. -- In the case of a declaration of estimated income tax for a calendar year, the initial payment date and the subsequent installment payment dates are set forth in the following table: See Appendix H

~~(SEE FOLLOWING PAGE FOR TABLE)~~

Date of Filing Declaration	Dates of Installment Payments
(1) On or before April 15th	In four equal installments - one at time of filing declaration (on or before April 15), one on or before June 15, one on or before September 15, and one on or before January 15 of the succeeding taxable year.
(2) After April 15 and be bore June 16, if not required to be filed on or before April 15	In three equal installments - one at time of filing declara tion (on or before June 15), one on or before September 15, and one on or before January 15 of the succeeding taxable year.
(3) After June 15 and be fore September 16, if not required to be filed on or before June 15 or	In two equal installments - one at time of filing declaration (one on or before September 15), and the other on before January 15 of the succeeding taxable year.
(4) After September 15, if not required to be filed on or before September 15.	In full at time of filing declaration.

(c) Filing After The Prescribed Time. -- If a declaration is filed after the time prescribed in Section 55 of these regulations, or after the expiration of any extension of time, paragraphs (2), (3) and (4) of this subsection shall not apply, and there shall be paid at the time of filing the declaration of estimated tax all installments of the estimated tax which would have been payable on or before such date of filing if the declaration had been filed on or before its due date, determined without regard to any extension of time. The remaining installments shall be paid at the time and in the amounts in which they would have been payable if the declaration had been filed when originally due. Thus, for example, B, who was required to file a declaration of estimated income tax on or before April 15, 1984, files his declaration for 1984 on September 15, 1984. In such case, at the time of filing his declaration, B was delinquent in the payment of two installments of his estimated income tax for the taxable year of 1984, and therefore three-fourths of the estimated tax shown thereon must be paid. Special rules apply for 1983 estimated tax. See Section 56.09 of these regulations.

56.02. Estimated Income Tax Payments by Farmers. Special provisions are made with respect to the filing of the declaration and the payments of the tax by an individual whose estimated West Virginia adjusted gross income for the taxable year is at least two-thirds from farming. (See Section 55.05 of these regulations). The declaration of such an individual may be filed on or before January 15th of the succeeding taxable year, in lieu of the time prescribed for taxpayers generally. Where such an individual makes a declaration of estimated income tax after September 15 of the taxable year, the estimated income tax shall be paid in full at the time of the filing of the declaration. See W. Va. Code § 11-21-56(b).

15 of the taxable year, the estimated income tax shall be paid in full at the time of the filing of the declaration.

56.03. Amendments of declaration. If any amendment of a declaration is filed, the remaining installments, if any, shall be rateably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated income tax by reason of the amendment. If any amendment is made after September 15 of the taxable year, any increase in the estimated income tax by reason thereof shall be paid in full at that time.

56.04. Short taxable years. In the case of a short taxable year of an individual for whom a declaration is required to be filed, the estimated income tax may be paid in equal installments, one at the time of filing the declaration, one on the 15th day of the sixth month of the taxable year and another on the 15th day of the ninth month of such year (unless the short taxable year closed prior to such sixth or ninth month, in which case the respective installment will be eliminated) and one on the 15th day of the first month of the succeeding taxable year. For example, if the short taxable year is the period of ten months from January 1, 1962 to October 31, 1962 and the declaration is required to be filed on or before April 15, 1962, the estimated income tax is payable in four equal installments: one on the date of filing the declaration, and one each on June 15, September 15 and November 15, 1962. If, in such case, the declaration is required to be filed after April 15 but on or before

June 15, the tax will be payable in three equal installments, one on the date of filing the declaration, and one each on September 15 and November 15, 1962.

56.05. Fiscal year. In the case of individuals on a fiscal year basis, other than those referred to in sections 55.05 and 55.06 of regulation 55, the declaration must be filed on or before the 15th day of the fourth month of the taxable year. The provisions of this section and of section 55 of these regulations shall apply to a taxable year other than a calendar year by the substitution of the corresponding fiscal year months for the calendar year months referred to in this section.

56.06. Installments paid in advance. At the election of the taxpayer, any installment of the estimated income tax may be paid prior to the date prescribed for its payment.

56.07. Death of taxpayer. In the case of a decedent, payments of estimated income tax are not required subsequent to the death. However, see subsection 55.01(c) relating to the making of an amended declaration by a surviving spouse if a joint declaration had been made before the death of the decedent.

56.08. Application of installment payments. The payment of any installment of estimated income tax shall be considered payment on account of the income tax for the taxable year for which the declaration is made. The aggregate amount of the payments of estimated income tax should be entered upon the income tax return for such taxable year as payments to be applied against the tax shown on such return.

Section 56a. Interest and Additions to Tax.

56a.01. Applicability. -- The interest and additions to tax provisions of W. Va. Code §§ 11-10-17 and 11-10-18 are applicable to underpayments of estimated personal income tax. They will be applicable regardless of whether there is a failure to pay the entire amount of any installment of estimated tax on or before its due date (See W. Va. Code § 11-21-56), or the amount of estimated tax (employer withholding tax plus installment payments) paid during the taxable year was less than eighty percent (80%) of the tax due for the taxable year. Exceptions to this rule, hereinafter referred to as "safety zones," are set forth in Section 56a.05 of these regulations.

(2) Exception No. 2. -- Where the taxpayer qualifies under one of the safety zones described in Section 56a.05, no interest and additions to tax will be imposed for the period prior to the due date of the annual return.

56a.02. How Underpayment of Estimated Tax Is Measured.

(a) In General. -- To determine whether an individual's estimated tax payments for the taxable year equal at least eighty percent (80%) of his or her actual liability for the primary tax, surtax and minimum tax imposed by W. Va. Code § 11-21-3, the following procedure shall be applied. The term "estimated tax payments" includes both the amount of installment payments remitted under W. Va. Code § 11-21-56, and the amount of taxes actually deducted and withheld at the source from wages under W. Va. Code § 11-21-71. See W. Va. Code § 11-21-73.

(1) Determine the sum of the individual's primary income tax shown on his or her return for the taxable year (as reduced by the amount of allowable credits) plus his or her surtax and minimun tax for the taxable year. If no annual return was filed, take one hundred percent (100%) of the total tax determined to be due for the taxable year.

(2) Take eighty percent (80%) of the above amount.

(3) Divide the amount of (2), above, by the number of installments required for the year. Generally, this will require dividing by four, but may be three, two or one. See Section 56.01 of these regulations.

(4) For each installment as computed in (3), above, find the excess, if any, over the amount actually paid or credited toward that installment payment. (Add in any overpayments available from a previous installment). If there is no excess, no further computation is necessary for that installment. For purposes of subparagraph (4), it is presumed that wages are received in equal payments throughout the year and that taxes are withheld under W. Va. Code § 11-21-7 in equal installments.

(b) Amount of Underpayment. -- Any excess computed in (4), above, for any installment is the amount of underpayment of that installment. If the actual payment made which is an underpaid installment does not meet at least one of the available safety zone tests, interest plus additions to tax must be paid on the amount of that underpayment of estimated tax. See

(1) Section 56a.03 of these regulations for Computing Interest.

(2) Section 56a.04 of these regulations for Computing Additions to Tax.

(3) Section 56a.05 of these regulations for Safety Zones.

56a.03. Computing Interest.

(a) In General. -- Nonwaivable simple interest calculated at the rate of eight percent (8%) per year (2/3% per month) shall be imposed for the number of days from the due date of the installment payment to the earlier of:

(1) the fifteenth day of the fourth month after the close of the taxable year, or

(2) the date on which the tax or the underpayment of the installment is paid. An overpayment of a subsequent installment stops the running of the interest to the extent that it wipes out the previous underpayment. For this purpose, the fifteenth day of the fourth month after the end of the taxable year is taken as the day to which the interest is computed even though that is a Saturday, Sunday or legal holiday.

(b) Determination Of Due Date. -- The due date of an installment is determined with regard to any authorized extension of time for paying the installment. If the amount to be remitted with the annual return for the taxable year is two hundred dollars ($200) or less, or is twenty percent (20%) or less of the total tax shown to be due on the annual return, an automatic extension of time is granted for filing the declaration of estimated tax so that only the annual return needs to be filed. In this case the annual return shall be considered as the declaration of estimated tax. See Section 55.07 of these regulations relating to automatic extension of time for filing declaration.

(c) Application Of Payments Not In Excess Of The Amount Due. -- A payment that is not in excess of the amount due for that installment period applies to it, and cannot be used to credit an earlier period.

Example. -- A calendar year taxpayer receives most of its or her income during the last six months of the taxable year. He or she makes only a timely fourth quarter installment payment on January 15th, equal to 25% of 80% of the ultimate tax liability for the year. This taxpayer will not be deemed to have underpaid the installment due for the fourth quarter. However, interest and additions to tax will apply to the other installments.

(d) Application Of Payments In Excess of Amount Due. -- If an installment payment exceeds the amount due for that installment, the excess is applied to the amount delinquent from any earlier installment period. The excess is applied first to satisfy the delinquent tax for the earliest installment period and then to interest and additions to tax for that deficiency. Any excess is applied to the next earliest installment period in the same fashion. (Any excess remaining after all delinquent installments plus interest and additions to tax are satisfied, is credited to subsequent installments). If the next installment payment also exceeds the amount due, the excess is similarly applied, first to tax and then to interest and additions to tax. The oldest delinquency is satisfied first.

(e) Credit of Prior Year's Overpayment. -- A prior year's overpayment of tax can be credited against the current year's estimated tax only if the annual return for the preceding year and the declaration of estimated tax for the current tax year are filed at the same time. Once a declaration of estimated tax has been filed taking such a credit against the current year's estimated tax, the taxpayer may not subsequently file an amended declaration of estimated tax and assert a claim for refund in the amount of the purported overpayment. If it is subsequently determined that the taxpayer was not entitled to the amount of credit claimed on his or her annual return for the preceding year, the result will be a deficiency for the prior year. The effect is the same as if the claimed overpayment was refunded when it was credited against the estimated tax for the ensuing taxable year.

(f) Application of Safety Zone. -- If one of the safety zones applies to the underpayment of estimated tax, no interest will begin to accrue on the amount of the underpayment until the day after the day the annual return should have been filed (generally April 15th of the succeeding tax year) and the remaining amount of tax due paid.

56a.04. Computing Additions to Tax.

(a) General. -- In addition to interest calculated and applied as provided in Section 56a.03 of these regulations, additions to tax shall be imposed as provided in this Section.

(b) Additions to tax. -- The additions to tax provisions of W. Va. Code § 11-10-18 apply to any underpayment of estimated personal income tax, regardless of whether such underpayment is because of a failure to pay the entire installment payment when due (determined with regard to any authorized extension of time), or because the amount of tax due for the taxable year is underestimated unless one of the safety zones apply. See Section 56a.05 of these regulations relating to safety zones.

(1) Failure to timely file declaration of estimated tax. -- In the case of failure to make and file a declaration of estimated tax (or amended declaration) on or before the date prescribed by law, there shall be added to the amount of estimated tax shown (or that should have been shown) on the declaration 5% of the amount thereof if the failure is for more than one month plus an additional 5% for each month or fraction thereof

during which there is a failure to file the declaration. This addition to tax may not exceed 25% of the estimated tax liability. It is waivable by the Tax Commissioner where the taxpayer shows that failure to timely file the declaration was due to reasonable cause and not due to willful neglect. In the case of an amended declaration, this penalty applies only to the net amount of the additional estimated tax. The following examples illustrate application of this penalty.

Example No. 1. -- X reports on a calendar year basis. He failed to file his declaration of 1984 estimated tax that was due April 15, 1984. If that return had been filed, it would have shown estimated tax of $20,000. A penalty of 25% ($5,000) is imposed for the failure to timely file the declaration of estimated tax. This penalty is waivable if the taxpayer presents cogent evidence that his failure to timely file the declaration was due to reasonable cause and not due to willful neglect. This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

Example No. 2. -- X reports on a calendar year basis. He timely obtains from the Tax Commissioner an extension of time for filing his declaration of 1984 estimated tax from April 15, 1984 to June 15, 1984. X does not file his declaration until July 20, 1984. The estimated tax shown on the declaration is $20,000. A penalty of 10% is imposed for failure to file the declaration on June 15, 1984 (5% because the failure was for more than one month plus 5% for the succeeding month or fraction thereof during which the failure continued). This addition to tax is waivable if the taxpayer presents cogent evidence that his or her failure to timely file the declaration (determined with regard to any authorized extension of time) was due to reasonable cause and not due to willful neglect. This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

Example No. 3. -- X reports on a calendar year basis. He timely files his declaration of estimated 1984 tax on April 15, 1984, and remits 25% of the estimated tax. On August 20, 1984, X accepts an unanticipated offer from a purchaser resulting in the sale of some capital assets. X's declaration showed estimated 1984 tax of $20,000. Capital gain from the sale results in additional taxes of $10,000. X was required to file an amended declaration of 1984 estimated tax on or before September 15, 1984, which he did not do. X files his 1984 annual return on April 15, 1985. A penalty equal to 25% of the additional tax that should have been shown on the amended declaration is imposed for failure to file the amended declaration. Because taxpayer's actual 1984 tax was $30,000 and its declaration showed $20,000 of estimated tax, the penalty assessed will be 25% of $4,000, or $1,000. The penalty computation is ($30,000 x 80% = $24,000 -$20,000 = 4,000 x 25% = $1,000). This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

(2) Failure to timely pay an installment of estimated tax. -- In the case of failure to pay the entire amount of any installment payment of estimated tax, on or before its due date, there shall be added to the amount due 0.5% thereof if the failure is for one month or less plus an additional 0.5% for each month or fraction thereof during which there was a failure to pay the installment or any part of the installment then due. This addition to tax may not exceed 25% of the installment payment that is delinquent. This addition to tax is waivable by the Tax Commissioner if the taxpayer presents cogent evidence that the failure to timely pay is due to reasonable cause and not due to willful neglect.

(3) Application of paragraph (1) and (2). -- In computing additions to tax, paragraph (1) applies to any failure to file the declaration of estimated tax. Paragraph (2) applies where:

(A) The declaration of estimated tax was timely filed but the taxpayer failed to remit, in whole or in part, the amount of the installment payment which was due on the date the declaration was required to be filed, determined without regard to any extension of time for filing the declaration unless an extension of time for paying the installment was also granted.

(B) An extension of time for filing the declaration of estimated tax is granted without a concomitant extension of time for remitting the installment payment due on the day the declaration was originally due, e.g., the 15th day of fourth month of the tax year, and for any subsequent installment payments that become due and are not timely remitted.

(C) Any subsequent installment payment is not paid on or before its due date. The occurrence of the due date of each installment payment is a separate event.

(D) The taxpayer receives an extension of time to file its declaration of estimated tax, but does not obtain a concomitant extension of time for paying the first installment payment and any subsequent installment payment that becomes due during the extension period granted for filing the declaration.

(4) Negligence or intentional disregard of rules and regulations. -- In the case of any underestimating of estimated tax, except as provided in

subsection 56a.05(d) of these regulations, which is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the amount of tax underestimated (determined after multiplying the actual tax liability for the taxable year by 80%), divided by the number of installment payments due, 5% for each month of the deficiency up to 25% of the deficiency until it is paid.

56a.05. "Safety Zones" Bar Imposition of Interest and Additions to Tax for Underpayment of Estimated Tax.

(a) In General. -- Interest and additions to tax will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment (determined with regard to any authorized extension of time for payment), the total amount of all payments of estimated tax made equals or exceeds the least of the amounts due under "Safety Zones" 3 through 5 unless "Safety Zones" 1 or 2 apply.

(1) Safety Zone No. 1. -- The amount of tax due with the annual return on the fifteenth day of the fourth month following the close of the taxable year is two hundred dollars ($200) or less.

(2) Safety Zone No. 2. -- The amount of tax due with the annual return on the fifteenth day of the fourth month following the close of the taxable year is twenty percent (20%) or less of the tax liability for the taxable year.

(3) Safety Zone No. 3. -- The amount of "tax shown" on the previous year's West Virginia personal income tax return, if such preceding year began after December 31, 1982, and was a taxable

year of twelve (12) months reduced by the amount of West Virginia withholding taxes for the current year. Safety zone no. 3 avoids interest and additions to tax if the total payments of estimated tax made by each installment date are at least equal to the amount which would have been required on that installment date if the estimated tax was the amount of "tax shown" on the previous year's West Virginia personal income tax return reduced by the amount of West Virginia withholding taxes for the current year. In applying safety zone no. 3, the following rules apply:

(A) An individual that did not file a West Virginia personal income tax return for the preceding year cannot use safety zone no. 3.

(B) A married couple that did not file a joint West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 3.

(C) Safety zone no. 3 cannot be used when the preceding tax year was a tax year that began prior to January 1, 1983.

(D) The applicable tax credits are those allowed on the annual return for the preceding tax year.

(E) If the annual return for the preceding year is not filed on or before the due date of the declaration of estimated tax for the taxable year, the declaration of estimated tax for the current tax year cannot be based on last year's tax.

(4) Safety Zone No. 4. -- The amount of tax which would be due if computed based on the facts and law applicable to the West Virginia personal income tax return for the preceding year, but using current year rates, personal exemptions and credits. This safety zone avoids interest and additions to tax if the total payments of estimated tax already made by the installment date are at least equal to an amount which would have been required on that installment date if the estimated tax was a tax based on the facts shown on the previous year's return and the previous year's law, but using current year rates, personal exemptions and credits. In applying safety zone no. 4, the following rules apply:

(A) Nonrecurring items of income and deductions are not to be excluded.

(B) An individual who did not file a West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 4.

(C) A married couple that did not file a joint West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 4.

(5) Safety Zone No. 5. -- The amount of West Virginia personal income tax which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to eighty percent (80%) of the tax computed by placing on an annual basis the taxable income for the calendar months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this paragraph, taxable income shall be placed on an annualized basis by:

(A) Multiplying by twelve (12) (or the number of months in the taxable year if less that twelve (12)) the West Virginia adjusted gross income and the greater of West Virginia itemized deductions for the calendar months in the taxable year ending before the month in which the installment is required to be paid, or the amount which is the lesser of ten percent (10%) of the West Virginia adjusted gross income or $83.33 multipled by the number of such calendar months,

(B) Dividing the resulting amounts by the number of such calendar months, and

(C) Deducting from the annualized West Virginia taxable income the West Virginia deduction for personal exemptions (such exemptions being determined as of the date prescribed for payment of the installment).

(b) Application of Safety Zones to Short Tax Years. -- Interest and additions to tax for under payment of estimated tax apply equally to short tax years where a declaration of estimated tax is required to be filed. In computing the safety zones for short taxable years, the estimated tax (whether based on that shown on the previous year's return, based on the previous year's facts, or annualized current income) is reduced by multiplying the estimated tax for a full year by the percentage which the number of months in the short tax year bears to twelve. For this safety zone, the precentage figure will be applied to reduce the tax.

(A) If the preceding taxable year was a short year, estimated tax for the current year (for purposes of safety zone no. 4) will be computed on an annual basis (income x 12 ÷ number of months in the short year). The tax will not be reduced because of the short year.

(B) If the tax rates for the year of underpayment have changed from the preceding year, the estimated tax must be computed using current rates.

(c) Application of Safety Zones to 52-53 Week Tax Years. -- If a taxpayer has a 52-53 week taxable year, the rules on 52-53 week years are applied in determining whether a taxable year was a year of 12 months, and in determining the commencement of the 3-month period, or the 3- or 5-month period, or the 6- or 8-month period, or the 9- or 11-month period, whichever is applicable. If a 52-53 week year begins on December 26, 1981, taxable income for the first six months in computing safety zone no. 4 will be the taxable income for the period beginning on December 26, 1982 and ending on June 30, 1983. The reason is that the taxable year for a 52-53 week year is deemed to begin on January 1, 1983.

(A) If the end of any accounting period employed by the corporation (e.g., any of either thirteen 4-week periods, or four 13-week periods) does not correspond with the end of the applicable period used in annualizing, the taxable income is determined as follows:

(1) Determine the taxable income from the beginning of the taxable year to the close of the accounting period ending immediately before the end of the period used in annualizing.

(2) Determine the taxable income from the beginning of the taxable year to the close of the accounting period which straddles the end of the 6, 8, 9 or 11-month period.

(B) The difference in taxable income between that in paragraph (1) and that in paragraph (2) is multiplied by the number of days from the close of the first accounting period to the end of the period used in annualizing and divided by the number of days between the termination dates of the two accounting periods.

(C) The amount computed under paragraph (B) is added to (or subtracted from) paragraph (1) to determine the taxable income for the period.

(D) Illustration: A 52-53 week year individual has a taxable year beginning on December 26, 1982 and uses thirteen 4-week accounting periods in determining taxable income. Taxable income from December 26, 1982 to the close of the 4-week period ending on June 11, 1983 is $200,000; to the end of the 4-week accounting period ending on July 9, 1983 is $228,000. Taxable income for the 6-month period ending on June 30, 1983 is $219,000, computed as follows:

Taxable income for period ending before June 30		$200,000
Taxable income for period stradding June 30		228,000
Difference		$ 28,000

Days from end of first accounting period to June 30	19	
Days from end of first accounting period to end of second accounting period	28	
19/28 of $28,000		$ 19,000
Taxable income for period ending June 11		200,000
Taxable income for period ending June 30		$219,000

(d) Safety Zone Requirements. -- Safety zone requirements must be satisfied on each installment date to avoid the imposition of interest and additions to tax on an underpayment of estimated tax as of the installment date. For purposes of paragraph (d), it is presumed that a taxpayer's West Virginia taxable income is received in equal installments throughout the taxable year. The taxpayer bears the burden of proof to establish that the West Virginia taxable income was received during the taxable year in some other manner.

(e) Return for the Preceding Taxable Year. -- The term "return for the preceding taxable year means the West Virginia personal income tax return required to be filed by W. Va. Code § 11-21-51 for the taxable year immediately preceding the current taxable year. If an amended return was filed for the preceding taxable year before the due date of the declaration of estimated tax for the current taxable year (determined with regard to any extension of time for filing), then it constitutes the return for the preceding taxable year if it is a reasonable estimate of the amount of tax due for the current taxable year.

(f) "Facts Shown on the Preceding Year's Return." -- The facts shown on the preceding year's return include:

(A) A net operating loss deduction properly claimed on the preceding year's return.

(B) The facts shown on a West Virginia joint personal income tax return for the preceding taxable year where the individual no longer qualifies to file a joint return.

(C) Tax credits claimed on the return for the previous year, even though allowable credits for the current taxable year are reasonably expected to be greater than or less than those allowed for the preceding year.

Section 57. Extensions of time.

57.01. General.

(a) The tax commissioner may grant an extension of time for filing any return or any document required to be filed under the West Virginia Income Tax Act or for the payment of any tax due under the Act. Except for taxpayers who are outside the United States, no extension shall exceed six months.

(b) If a taxpayer feels that an extension of time is necessary, he should not make his request for an extension of time to the West Virgina Income Tax Division except in rare cases. In order to obtain an extension of time to file a West Virginia annual return, a taxpayer must only obtain an extension of time from the District Director of the Internal Revenue Service.

(c) If the taxpayer obtains an extension of time federally, he must make a notation on his West Virginia return of the date to which the extension was issued and by what District Director's office the extension was granted. Most West Virginia taxpayers would obtain an extension from the District Director, Parkersburg, West Virginia. For example, a taxpayer needed an extension for 30 days. The taxpayer applied to the District Director for the extension and it was granted. The taxpayer then has an automatic extension with the State Income Tax Division and need only note in a conspicuous manner on his West Viriginia return that an extension was granted to May 15 by the District Director, Parkersburg, West Virginia.

(d) Should the District Director deny an extension request and require the taxpayer to file his return in a certain number of days, this should also be noted conspicuously on the return.

(e) West Virginia extensions of time. In rare cases, where an extension of time is not needed federally, but is felt, by the taxpayer, that it is needed for West Virginia income tax purposes, a specific request should be made to the Income Tax Division. This type of request will be considered and a prompt reply made to the taxpayer. Generally, an extension of time to file a return on an original application will be limited to a period of time not in excess of sixty (60) days. Longer periods of time will not be granted by the tax commissioner unless sufficient need for such extended period is clearly shown. In no event will an extension of time to file a West Virginia return be granted in excess of six months for taxpayers within the United States.

(1) If an additional extension of time is required by a taxpayer, a copy of the last extension granted to him must be attached to the new request in every instance.

(f) Prescribed form of application for West Virginia extension. A taxpayer, who desires an extension of time for West Virginia purposes but not for federal purposes, including an estate, a trust or partnership, must make such request by a written application setting forth all reasons and pertinent data therefor. The application must be submitted in sufficient time to enable the Income Tax Division to consider action on the application before the regular due date of the return.

(g) Automatic extensions.

(1) Although the due date for filing income tax return is the 15th day of the fourth month following the close of the taxable year, an automatic extension of time for filing income tax returns will be granted to taxpayers residing or traveling abroad. The automatic extension is granted up to and including the 15th day of the sixth month following the close of the taxable year (June 15 for a calendar year taxpayer).

(2) For these automatic extensions of time, a statement must be attached to the West Virginia return showing that the taxpayer was residing or traveling abroad outside the United States on the due date (April 15, for calendar year taxpayers) of the return, and he must pay interest at the rate of six (6) percent per annum on the unpaid tax, if any, from the original due date of the return until paid.

(3) The term "United States" does not include the State of Alaska; therefore, a West Virginia taxpayer residing or traveling in Alaska on the due date of the return qualifies for the automatic extension.

(h) Members of the Armed Forces. A member of the Armed Forces of the United States is required to file his West Virginia income tax return at the same time as prescribed for any other taxpayer. However, if such a person is abroad or in Alaska on the due date of his return, he is granted an automatic extension of two months as stated in paragraph (3) above. Also, in the case of a taxpayer serving in the Armed Forces of the United States in an area designated by the President of the United States as a "combat zone", at any time during the period designated by the President as the period of combatant activities in such zone, or hospitalized outside the state as a result of injuries received while serving in such area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injuries, and the next six months thereafter, shall be disregarded in determining whether the taxpayer has filed his return within the prescribed time.

57.02. Amount determined as deficiency.

(a) An extension of time for filing the return automatically extends the time for payment of the tax. In addition, the Tax Commissioner may separately grant an extension up to eighteen months for the payment of the tax, upon a written request from the taxpayer setting forth complete information as to the reasons for his inability to make payment of the tax due on his return. If the taxpayer feels he cannot make payment of the tax due within the prescribed period of extension, he may make a request for further extension to the tax commissioner. Such further extension may not exceed twelve months and may be granted only if it is established to the satisfaction of the tax commissioner that exceptional circumstances exist and that to require payment within the time prescribed by the first extension would work an undue hardship on the taxpayer.

(b) No extension for payment of taxes will be granted if any part of the deficiency is due to a disregard of rules and regulations or to fraud.

(c) Except where specifically provided otherwise, if the time for payment of tax is extended, interest at the rate of six per centum per annum from the original due date of the return until paid shall be added to such tax. The preceding sentence also applies to the automatic extensions referred to in subsection (a)(3) of this regulation.

57.03. Claims in bankruptcy or receivership proceedings. Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax. See subsection (b) of this regulation.

57.04. Furnishing of security. As a prerequisite to granting an extension of time for payment of any tax or deficiency, the tax commissioner may require the taxpayer to furnish a bond or other security. Such bond or other security shall be in an amount not exceeding twice the amount for which the extension of time for payment is granted.

Section 58. Requirement concerning returns, notices, records and statements.

58.01. General.

(a) Every person subject to tax under the West Virginia Income Tax Act or for the collection of such tax, and any person required to file a return of information with respect to income, shall keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any return of such tax or information. The tax commissioner is authorized to prescribe the content and form of returns and statements and may require the inclusion in a return, document, or statement of any information he deems necessary for the proper enforcement of the West Virginia Personal Income Tax Act. For purposes of this section the word "person" includes but is not limited to any individual, partnership, association or corporation, estate or trust.

(b) If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, then the computation of taxable income is made under such a method as, in the opinion of the tax commissioner, does clearly reflect income.

(c) Bookkeeping entries of themselves are not conclusive of the amount of income. The actual facts rather than the book entries control. Also, entries on another individuals books are not conclusive against a taxpayer.

(d) Retention of records. The books or records required by this section shall be kept at all times available for inspection by authorized representatives of the tax commissioner.

(e) Farmers and wage earners. Individuals deriving gross income from the business of farming, and individuals whose gross income includes salaries, wages or similar compensation for personal services rendered, are required with respect to such income to keep such records (including duplicate copies of the wage and tax deduction statements furnished by their employers) as will enable the tax commissioner to determine the correct amount of income subject to tax.

(f) Form of records. The records required in this regulation shall be kept accurately, but no particular form is required for keeping the records. Such methods of accounting shall be used as will enable the tax commissioner to ascertain whether liability for tax has been incurred, and, if so, the correctness of the amounts required to be reported in any return of tax or information.

(g) Employer's records.

(1) Every employer or withholding agent, as defined for federal withholding tax purposes, required under the West Virginia Income Tax Act to deduct and withhold state income taxes upon the wages of employees, and every person, firm, organization or corporation required to file information returns

as described below in subsection 58.03, shall keep all records pertinent to these taxes and information reports available for examination and inspection by the tax commissioner, or his authorized representatives. Such records shall be retained and preserved for a period of four years following the close of the calendar year to which they relate.

(2) No particular form is prescribed for such records, but the records shall include the amounts and dates of all wage payments subject to West Virginia income tax, the names, addresses and occupations of employees receiving such payments, the periods of their employment, the periods for which they are paid by the employer while absent due to sickness or personal injuries and the amount and weekly rate of such payments, their social security account numbers, their income tax withholding exemption certificates, the employer's identification number, records of monthly or quarterly and annual withholding returns and reports filed, and the dates and amounts of withholding tax payments made.

(3) For nonresidents, performing services partly within and partly without the state, a record of

the allocation used for withholding purposes must be kept.

(h) Notice by Tax Commissioner requiring returns, statements, or the keeping of records. The tax commissioner may require any person, by notice served upon him, to make such returns, render such statements, furnish such copies of federal income tax returns and of federal audit determinations, or keep such specific records as the tax commissioner may deem necessary to verify whether or not such person is complying or has complied with applicable provisions of the West Virginia Personal Income Tax Act.

(i) Copies of returns, schedules and statements. Every person who is required in these regulations or by instructions applicable to any form prescribed thereunder to keep a copy of any return, schedule, statement or other document, shall keep such copy as a part of his record.

(j) Place for keeping records. All records prescribed by these regulations shall be kept, by the person required to keep them at one or more convenient safe locations accessible to the authorized representatives of the tax commissioner, and shall at all times be available for inspection by such representatives.

58.02. Partnerships.

(a) Every partnership having a resident partner or having any income derived from West Virginia sources shall file a partnership return for the taxable year. The partnership shall file a return regardless of the amount of its income and regardless of the taxable years of the partners. Such partnership return shall set forth all items of income, gain, loss and deduction. The return shall also set forth the names, addresses, social security numbers, and amount of distributive shares of income deduction of all partners, and such other information or schedules which the tax commissioner may prescribe on income tax forms and instructions.

(b) Under certain prescribed circumstances, the Internal Revenue Service does not require the execution and filing of a federal partnership return of information. Where a federal partnership return is not required for a taxable year, a West Virginia partnership return is not required for such taxable year.

58.03. Information at source. See section 72 of these regulations.

58.04. Notice of qualification as receiver etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary required under the Internal Revenue Code of 1954 and its applicable regulations to give notice of his qualification to act in such capacity shall give like written notice to the State Tax Commissioner, Charleston, West Virginia 25305.

58.05. Employers with nonresident employees working both within and without the state. If an employer has nonresident individuals as employees and these individuals work both within and without West Virginia, the employer is required to keep records which clearly reflect the amount of income earned within West Virginia and the number of days worked therein.

Section 59. Report of change in federal taxable income.

59.01. General. If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the tax commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. When making such report, the taxpayer shall disclose to the tax commissioner the full particulars of such federal tax change or correction.

59.02. Any taxpayer who files an amended federal income tax return must also file within ninety days thereafter an amended West Virginia income tax return, and shall in addition provide the tax commissioner such further information as he may require.

Section 60. Change of election.

60.01. General. Unless otherwise provided herein, any change of election made by a taxpayer for federal income tax purposes pursuant to the provisions of the Internal Revenue Code and its applicable regulations, which increases or decreases his federal taxable income for a taxable year, must be made similarly for West Virginia income tax purposes, except to the extent that such federal provisions are inconsistent with the West Virginia Personal Income Tax Act. A taxpayer making such a change of election for federal income tax purposes shall file an amended West Virginia return within ninety days thereafter. Any change of election shall be subject to the approval of the tax commissioner and, for this purpose, he may require such information, records or evidence that he deems necessary and may attach such conditions or limitations to his approval of such a change of election as he may consider advisable.

60.02. Husband and wife.

(a) Change from separate to joint return.

(1) A husband and wife can file separate West Virginia returns, and then after the time for filing returns (April 15th, for calendar year taxpayers) has passed they may elect to file a joint West Virginia return. This election may be made within three years after the date the original return was first due, without regard to any extension of

time. However, this election to change from separate to joint may be made only if the taxpayer has made the same election federally. See section 11 of these regulations.

(2) If a husband and wife determine their federal taxable income on a joint federal return, they may elect to determine their West Virginia taxable income on a joint West Virginia return. If the taxpayers elect to change from a joint return to separate returns federally, within the prescribed time period, the taxpayers must also make the same election for West Virginia purposes. See section 11 of these regulations. An election to file a joint West Virginia return is binding and may not be changed after the due date of the original West Virginia return. A different election may be made each year.

(b) Husband and wife with different resident status. Sections 11 and 31 of these regulations provide that, where either husband or wife is a resident and the other is a nonresident, they shall file separate returns unless they were otherwise entitled to file a joint federal return and both elect to file a joint West Virginia return for the taxable year as if both were residents. A husband and wife may elect to file a joint West Virginia return only if one spouse was a resident for the entire taxable year and the other spouse was a nonresident for the entire taxable year. If they exercise such election they will be permitted to change their original election to file separate state returns and to make, instead, a joint return as if both were residents in accordance with section (1) above, provided that the tax due on such joint return is paid in full at the time it is filed.

(c) Approval for change of election. Elections to make the changes as hereinbefore described and to file amended returns shall be subject to the tax commissioner's approval and discretion. No amended return filed with the tax commissioner shall be valid unless the amount of tax due on such amended return is or has been paid in full at the time of the filing of the amended return.

60.03. Use of standard or itemized deduction. Where the taxable income of an individual taxpayer is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct the West Virginia itemized deduction in lieu of the West Virginia standard deduction. Such election may be changed in accordance with section 60.01 above.

60.04. Penalties and interest. The filing or acceptance of an amended return pursuant to this regulation shall not prevent the assessment of any penalty, additions to tax or interest to which the taxpayer may be subject prior to the filing of such amended return, except that the amount thereof shall be computed upon the amount of tax due after giving effect to any change of election made in such amended return.

~~PART V. WITHHOLDING OF TAX~~

Section 71. Requirements of withholding tax from wages.

71.01. General. Every employer maintaining an office or transacting business within West Virginia and making payment of any wages taxable under the West Virginia Income Tax Act to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period such amount of tax as will result in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due as the result of the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year. For this purpose, the provisions of the Federal Internal Revenue Code and its applicable regulations, with respect to deducting and withholding of federal income tax by employers from wages, including the meaning of the various federal terms (such as "employer", "employee", "wages", "payroll period", "withholding exemptions") shall apply for West Virginia income tax purposes except as otherwise specifically provided herein or where such federal rules and definitions are clearly inconsistent with and inapplicable to the provisions of this part.

(a) Employer.

(1) The term employer means any person for whom an individual performs or performed any service, of

whatever nature, as the employee of such person. An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting on behalf of the trust or estate, is generally the employer.

(2) The term employer embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax; such as, charitable organizations and educational institutions.

(3) The term employer shall also mean any person or organization qualifying as an employer for federal income tax withholding purposes and maintaining an office or transacting business within West Virginia, whether or not a paying agency is maintained within this state.

(b) Wages. Payments which are considered wages for federal income tax withholding purposes are also considered wages for purposes of West Virginia income tax withholding. However, the term wages in respect to withholding for West Virginia income tax shall not include:

(1) payments made to members of the Armed Forces of the United States, including Reserve and National Guard components, and

(2) payments made to seamen who are members of the crew on a vessel engaged in foreign, coastwise, intercoastal, interstate or noncontiguous trade.

(c) Employer relieved from withholding.

(1) A determination by the Internal Revenue Service which relieves an employer from withholding responsibility with respect to payments to an employee shall also apply for West Virginia income tax withholding purposes; however, the employer who is granted such relief by the Internal Revenue Service must notify and provide the tax commissioner with all particulars concerning the granting of such relief by the Internal Revenue Service.

(2) Where an employer is required to reinstate withholding of federal income tax with respect to an employee, such reinstatement is equally applicable for West Virginia withholding purposes.

71.02. Withholding exemptions.

(a) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes.

(b) Notwithstanding the foregoing, in determining the proper tax to be deducted and withheld from an employee's wages, the employer shall allow the number of exemptions claimed by the employee on his withholding exemption certificate. However, since the number of exemptions for federal and West Virginia income withholding purposes is generally the same, the employer may accept the federal form W-4 filed by the employee, unless such employee elects to file a West Virginia withholding exemption certificate. Once filed with the employer, a withholding exemption certificate will remain in effect until an amended certificate is furnished.

The "withholding exemptions", in general, correspond with the exemptions to be allowed the employee in computing his income tax on his West Virginia annual return. The employer is not required to determine whether the employee has claimed the correct number of exemptions. However, if it is believed that the employee has claimed an excessive number of exemptions, the West Virginia Income Tax Division should be so advised.

(c) The amount of each West Virginia exemption shall be six hundred dollars whether the individual is a resident or a nonresident.

71.03. Exemption for certain nonresidents.

(a) Normally every employer maintaining an office or transacting business in this state and making payment of wages taxable in West Virginia shall withhold from such wages in accordance with the state tax commissioner's regulations. Certain nonresidents of this state whose income from salaries and wages earned in this state would otherwise be subject to withholding are excepted from this requirement. If such employees are residents of another state of the United States having an income tax law, the credit provisions of which result in its residents being allowed a credit against the West Virginia tax sufficient to offset all taxes required to be withheld, the employer of such employee is relieved from the wihholding requirements of the West Virginia Personal Income Tax Act in accordance with the following paragraph.

(b) Employers of resident individuals of Maryland and Virginia who are nonresident employees of West Virginia firms, need not withhold from wages and salaries of said individuals, even though such nonresident employees are required to file annual returns for the taxable year with this state. The preceding sentence shall apply only if the nonresident employee properly executes and files a West Virginia exemption certificate with his employer.

71.04. <u>Wages paid to a nonresident</u>.

(a) <u>General</u>.

(1) An employer shall deduct and withhold on all wages paid to a nonresident employee for services performed in West Virginia. For an exception, see the preceding subsection 71.03 of this regulation.

If such services are performed entirely within West Virginia, the employer shall withhold the tax from all wages paid to such employee.

(2) The compensation paid to a nonresident employee for services rendered entirely without the state is not considered West Virginia wages and therefore is not subject to West Virginia withholding, whether payment is made from within or without the state.

(b) Wages of a nonresident for services performed partly within and partly without the State.

(1) If a nonresident employee performs services for his employer partly within and partly without West Virginia, the employer may require him to execute an employee's certificate of nonresidence for the purposes indicated below.

(2) The employer may withhold on the basis of the apportionment shown by the nonresident employee on the above certificate but must nevertheless make necessary adjustments during the year so that the proper amount of tax is withheld from the employee's wages. For the purpose of making these adjustments, the proportion of renumeration which is paid for services rendered within West Virginia is determined as follows:

(A) If the services are rendered by a traveling salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the amount attributable to services in West Virginia is that proportion of the compensation received which the volume of business transacted by the employee within the State of West Virginia bears to the volume of business transacted by him both within and without the State of West Virginia.

(B) With respect to all other employees, the amount of wages attributable to services within West Virginia is that proportion of the total compensation which the total number of working days employed within West Virginia bears to the total number of working days employed both within and without West Virginia, exclusive of nonworking days, such as Saturdays, Sundays, holidays, and days of absence because of illness, personal injury, vacation or leave with or without pay.

(3) The portion of wages allocable to West Virginia may be determined by the employer on the basis of

the preceding year's experience, except that the employer shall make any necessary adjustments during the year to insure that the required tax is withheld for the current year. If the employee reasonably expects that the preceding year's experience will not be applicable to the current year, he may furnish to his employer a statement estimating the proportion of his wages allocable to West Virginia, or the employer himself may make such estimate and may then withhold on the basis thereof; in either case, however, the employer is required to make the necessary adjustments during the year so that the proper amount is withheld from the employee's salary for the current year.

(4) Where a nonresident employee will work only a short period of time within West Virginia and it is reasonably expected that the total wages of such nonresident employee for services rendered within West Virginia will not exceed his personal exemptions, the employer need not withhold or deduct any amount from his wages until the aggregate amount paid to him exceeds his exemptions.

(5) An employer is required to withhold on all wages paid to a nonresident who works partly within and partly without West Virginia unless there is filed

with him the statement referred to above or unless the employer maintains adequate current records to determine accurately the amount of wages from West Virginia sources. As to maintaining records, see section 58.05 of these regulations. The mere filing of such form does not, however, relieve the employer from the duty of withholding the proper amount of tax from wages paid to an employee. The form is to be retained by the employer but is to be available for inspection by representatives of the tax commissioner.

71.05. Wages paid to a resident. Wages paid to a resident of West Virginia are fully subject to withholding even though some or all of the services may have been rendered without West Virginia, for a resident's wages are taxable under the West Virginia Income Tax Act regardless of where earned.

71.06. Determining tax to be withheld. The West Virginia income tax to be withheld by an employer must be determined in accordance with one of the following income tax withholding methods:

Method I	Wage Bracket Method
Method II	Percentage Method
Method III	Computer Method

In cases of special situations, an employer may apply to the tax commissioner for permission to use another method. The methods set out above are obtainable in booklet form and may be obtained by requesting same from the Income Tax Division.

Section 72. Information statement for employees.

72.01. General. Every employer required to deduct and withhold tax under the West Virginia Income Tax Act from the wages of an employee shall furnish to each such employee on or before February 15 of the year succeeding the taxable year a West Virginia withholding tax statement. If such individual's employment is terminated before the close of the taxable year, the employer is required to furnish such employee a West Virginia withholding statement on the date of the last payment of wages to such employee.

72.02. Information required on withholding statement. The West Virginia withholding tax statement must contain the following information:

(a) The employer's name, address, and identification number.

(b) The employee's name, complete address and social security account number.

(c) The employee's total West Virginia wages before payroll deductions, i.e., all wages paid residents, or all wages earned in West Virginia by nonresidents.

(d) The total amount of West Virginia income tax withheld, if any, from the employee's wages.

(e) The employee's total wages for federal tax purposes, if different from wages for West Virginia tax purposes.

(f) The total amount of federal income tax withheld, if any, from the employee's wages.

Section 73. Credit for tax withheld.

73.01. General. The West Virginia income tax deducted and withheld from an individual's wages in any calendar year shall be allowed as a credit against the West Virginia income tax imposed on such individual. If the tax has actually been withheld by the employer, such credit shall be allowed to the person from whose wages the tax was withheld, even though such tax has not been paid over to the tax commissioner. However, the taxpayer will not be granted credit for West Virginia income taxes withheld from wages unless the taxpayer attaches a withholding tax statement to his annual return to substantiate such claimed credit.

73.02. Year of credit. The tax withheld during any calendar year shall be allowed as a credit in accordance with the above paragraph against the tax imposed for the taxable year which begins in such calendar year. Since most employees file returns on the calendar year basis, they receive credit for the tax withheld during their entire reporting year. However, in the case of a taxpayer who files his returns on a fiscal year basis and who is required to include in a return for such fiscal year the income from wages received during such fiscal year (cash basis taxpayer), credit must be claimed for the entire tax withheld in the calendar year during which such fiscal year began. This is true even though the withholding tax statement furnished by the employer shows wages paid and tax withheld for the calendar year.

<u>Example</u>: A files on a fiscal year basis beginning June 1, 1962, and ending May 31, 1963. The full amount of tax withheld during the calendar year 1962 must be claimed as a credit on such fiscal year return and it may not be prorated to reflect the portion withheld from June 1 to December 31, 1962. The withholding tax statement for 1962 must be attached to the return filed for such fiscal year ending May 31, 1963.

Section 74. Employer's return and payment of withheld taxes.

74.01. General. Every employer required to deduct and withhold West Virginia income tax shall, on or before the last day of the month following the close of each calendar quarter, file with the Income Tax Division, State Tax Commissioner, Charleston, West Virginia 25305, an employer's return of personal income tax withheld and remit with such return the full amount of taxes withheld during such calendar quarter. The due dates of the four quarterly returns are as follows:

Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

Returns and payments must be made quarterly as stated above. Once a quarterly return is required to be filed, an employer must continue to file quarterly returns thereafter until he has permanently ceased to pay wages under his current identification number. For exceptions to the preceding sentence, see subsections (a) and (b) below. Accordingly, such quarterly returns are required to be filed even though, in a specific quarter, no wages are paid or tax withheld. On such returns, the employer should state the reason why no West Virginia income tax was withheld on the quarterly return.

(a) Annual returns. Where the aggregate amount of West Virginia income tax withheld by the employer is less than $25.00 in a calendar quarter and the total amount can reasonably be expected to be less than $100.00 for the entire calendar year, the employer may be granted permission to file his withholding returns annually instead of quarterly. However, an employer may not withhold on an annual basis unless he has obtained permission to do so from the Income Tax Division.

(b) Monthly returns.

(1) If in the discretion of the tax commissioner it is deemed advisable, monthly payments may be required to be made to the tax commissioner, or to a designated depository, by employers withholding amounts in excess of $100.00 in any month.

(2) If an employer's withholding account is delinquent, he may be required to withhold on a monthly basis at the discretion of the tax commissioner.

(c) Correcting mistakes.

(1) Any mistakes in withholding shall be corrected in the same manner as provided for federal withholding tax purposes. However, if a mistake in income tax withholding cannot be adjusted on a return for a subsequent return period of the same calendar year, the Income Tax Division must be consulted as to the proper method of correction.

(2) Where an overpayment results solely from computation errors made by an employer in the preparation of the return or remittance, such employer may apply for a refund of such overpayment.

(d) Annual reconciliation of tax withheld.

(1) The annual reconciliation of West Virginia income tax withheld must be submitted by the employer on or before February 28 following the close of the calendar year, together with the Income Tax Division's copies of all withholding tax statements for the year. These forms must be accompanied by a list, preferably in the form of an adding machine tape or accounting machine listing of the amounts of income tax withheld. These forms are to be submitted separately from the employer's quarterly return.

(2) Where the number of withholding statements is substantial, they may be forwarded to the Income Tax Division in packages of convenient size. When this procedure is followed, the packages should be identified with the name and account number of the employer and consecutively numbered and the annual reconciliation placed in package number one. The number of packages should be indicated on the annual reconciliation.

(3) If an employer's total payroll consists of a number of separate establishments, the withholding statements may be assembled accordingly and a separate list submitted for each establishment. In such case, a summary list should be submitted, the total of which must agree with the corresponding entry made on the annual reconciliation.

(e) Termination of business. If an employer permanently discontinues or sells his business or permanently ceases to pay wages under his current identification number, withholding returns shall be filed simultaneously with or within 30 days after the filing of the final quarterly return and shall be accompanied by the adding machine tape or accounting machine listing referred to above. Such last return must be marked "Final Return".

(f) Use of pre-addressed forms. If pre-addressed forms are mailed to the employer by the Income Tax Division for use in filing the employer's withholding returns, such pre-addressed forms shall be used by the employer in filing these reports. Where use of such forms is impracticable, the employer must exercise extreme care to show the employer's name and identification number exactly as such appear on previously filed returns.

(g) West Virginia employer's identification number.

(1) Each employer will be identified by a West Virginia employer's identification number. This identification number will be the same as the

federal identification number in every case where the employer has been assigned such a number by the District Director of Internal Revenue.

(2) In any instance where an employer has not been assigned an identification number for federal purposes and is not required to obtain such a federal number, the employer must notify the Income Tax Division which will assign a West Virginia number for his use. If an employer has been assigned an identification number by the Income Tax Division and later obtains a federal number, he must notify the Income Tax Division of the federal number and he will be notified to discontinue using the West Virginia identification number.

(3) Each employer must have only one identification number. If an employer has been assigned more than one federal number and has not been advised which one to use, he should notify the District Director of Internal Revenue of the numbers he has, the name and address to which each number was assigned and the address of his principal place of business. The District Director will then advise him which number to use.

(4) An employer who has acquired the business of another employer must not use any identification number assigned to the original employer, but must obtain a new identification number in accordance with this regulation.

74.02. Deposit in trust for tax commissioner.

(a) Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required by the West Virginia Income Tax Act, the tax commissioner may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes within the time specified in such notice in a bank approved by the tax commissioner, in a separate account in trust for and payable to the tax commissioner, and to keep the amount of such tax in such account until payment over to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served by the tax commissioner. Any employer, who, after service of such notice by the tax commissioner, fails to comply with the instructions contained therein shall be liable for criminal and civil penalties.

(b) In lieu of the requirement referred to in the preceding paragraph to deposit the taxes on a separate bank account and trust for and payable to the tax commissioner, the notice may require the employer to remit such taxes to a designated officer or employee of the State Tax Commissioner.

Section 75. Employer's liability for withheld taxes.

75.01. Every employer required to deduct and withhold West Virginia income tax from wages of an employee is liable for the payment of such tax, whether or not it is collected from the employee by the employer.

(a) If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of tax. See, however, section 76. The employer is relieved of liability to any other person for the amount of any such tax withheld and paid over to the tax commissioner, and no employee shall have any right of action against his employer in respect to any monies deducted and withheld from his wages and paid over to the tax commissioner in compliance or in intended compliance with the West Virginia Income Tax Act.

(b) Any amount of tax withheld shall, with respect to the recipient of the wages, be deemed to have been paid by him and shall, in the hands of the employer or withholding agent, constitute a special fund in trust for the tax commissioner.

(c) All the provisions of sections 80 through 93 of the West Virginia Income Tax Act, relating to assessment and collection of taxes, and to penalties, additions to tax, interest and crimes in respect thereto, shall apply to every employer required to withhold West Virginia Income Tax.

Section 76. Employer's failure to withhold.

76.01. General. If an employer fails to deduct and withhold tax as required, and thereafter the income tax against which such tax may be credited is paid by the employee, the tax required to be deducted and withheld shall not be collected from the employer. However, the preceding sentence shall not relieve the employer from any liability for any penalties, interest, additions to tax, or crimes otherwise applicable in respect of such failure to deduct and withhold.

76.02. Example: An employer fails to deduct and withhold West Virginia income tax from an employee's wages (on whose wages he is required to withhold). Thereafter, the employee files his West Virginia Personal Income Tax Return and pays the income tax shown on the return to be due. Since the tax was paid by the employee, the Income Tax Division is precluded from collecting the tax which the employer should have withheld from the employee; however, the payment of the tax by the employee does not relieve the employer from penalties, interest, additions to tax and crimes in respect to his failure to withhold.

State Tax Department of West Virginia

ARCH A. MOORE, JR.
GOVERNOR

Charleston 25305

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Michael E. Caryl
Tax Commissioner

Entered