



State Tax Department
of West Virginia

Charleston 25305

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Telephone
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June 29, 1983

Honorable A. James Manchin
Secretary of State
Capitol Building, W-157
Charleston, West Virginia 25305

Dear Mr. Secretary:

Enclosed are three copies of a taxability ruling which Commissioner Rose recently issued concerning the personal income tax liability of estates and trusts. Two copies are presented for filing in the State Register. Please mark the third copy as having been filed and return it to this office.

As a general rule, taxability rulings are protected from public disclosure or release by W. Va. Code § 11-10-5(e). However, in this instance, the taxpayer waived its right to confidentiality provided its identity remained confidential so that copies of the taxability ruling could be released to the public.

Having determined that publication of this taxability ruling is both appropriate and in the interest of sound tax administration, we are submitting these copies for filing in the State Register, as permitted by W. Va. Code § 29A-2-3(f).

We appreciate your assistance in this matter.

Very truly yours,

Dale W. Steager, Director
Legal Division

DWS/be

Enclosure

cc: Herschel H. Rose III
State Tax Commissioner

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE June 29, 1983
Administrative Law Division



**State Tax Department
of West Virginia**

Charleston 25305

TAXABILITY RULING JUNE 13, 1983
WEST VIRGINIA TAX DEPARTMENT
HERSCHEL H. ROSE III, COMMISSIONER

RE: PERSONAL INCOME TAX - WHETHER ESTATES AND TRUSTS ARE
SUBJECT TO THE 12% TEMPORARY SURTAX.

On June 13, 1983, the West Virginia State Tax Commissioner issued a letter ruling concerning whether estates and trusts are subject to the 12% temporary surtax on West Virginia taxable income during the period April 1, 1983 through June 30, 1985. W. Va. Code § 11-21-3(a)(2) and (4).

Recently the taxpayer who requested that ruling executed a waiver under W. Va. Code § 11-10-5(e), authorizing the filing of that letter ruling in the State Register provided all identifying fact and characteristics of the taxpayers were deleted.

A "taxability ruling" is a written statement issued by the Tax Commissioner to a specific taxpayer or his authorized representative. It interprets and applies the laws over which the Tax Commissioner has jurisdiction to the specific set of facts presented by that taxpayer. This is to be distinguished from the Tax Department's Administrative Regulations, which are statements of policy of general application promulgated in accordance with State Administrative Procedures Act, W. Va. Code § 29A-1-1 et. seq.

With respect to any other taxpayer, the results reached will depend upon the particular facts of that ruling request.

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TEXT OF RULING

This is in reply to your request for a ruling on whether estates and trusts are subject to the temporary surtax imposed by W. Va. Code § 11-21-3 (a)(e), effective April 1, 1983 through June 30, 1985. W. Va. Code § 11-21-3(a)(4).

W. Va. Code § 11-21-3(a)(2) provides that "[i]n addition to the primary tax imposed upon the persons, for the periods, on West Virginia taxable income, and at the rates, as aforesaid, there is hereby imposed an additional tax, a temporary surtax, of twelve percent of such determined primary tax liability...." (Emphasis added.) The term "persons" includes individuals, estates and trusts. See W. Va. Code § 11-21-9 incorporating the definition of "person" in 26 U.S.C. § 7701(a)(1); W. Va. Code § 11-21-95 incorporating the definition of "person" in W. Va. Code § 11-10-4(b).

W. Va. Code § 11-21-3(a)(2) goes on to provide that the surtax, in the case of individuals and heads of households, applies to West Virginia taxable income in excess of ten thousand dollars, and to a joint return with West Virginia taxable income in excess of twenty thousand dollars.

The question becomes whether the twelve percent surtax applies to estates and trusts regardless of the amount of West Virginia taxable income, or whether use of the term "individual" is descriptive of a class of taxpayers comprising individuals, estates and trusts, and as to that class, the surtax applies to West Virginia taxable income in excess of \$10,000.

Legislative intent in enacting Committee Substitute for Senate Bill No. 310, as it relates to the personal income tax, was to provide for an increase in personal income tax brackets above a specified level; to provide for a temporary surtax on personal income in certain brackets; to establish a minimum tax on personal income; to create a separate classification and rate tables for heads of households; to provide for the effect of any rate changes during the taxable year; to increase the amount of the West Virginia personal income tax exemption; and to provide for withholding to be in conformity with the increase in exemptions. See Title to Committee Substitute for Senate Bill No. 310.

We conclude that the term "individuals" as used in W. Va.

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Code § 11-21-3(a)(2) means those persons taxable at the rates set forth in W. Va. Code § 11-21-4d(a), while the term "heads of household" as used in W. Va. Code § 11-21-3 (a)(2) means those persons taxable at the rates set forth in W. Va. Code § 11-21-4d(b), and the term "those filing a joint return" means those persons taxable at the rates set forth in W. Va. Code § 11-21-4d(c).

You state in your letter that "[s]ince Article 21 has made a longstanding distinction between individuals and estates and trusts, I question the Tax Department's apparent position that estates and trusts are considered to be individuals insofar as the § 11-21-3(a)(2) surtax is concerned." We must disagree in part with this conclusion.

Individuals, estates and trusts have always been treated as one class of taxpayers for purposes of imposition of tax on West Virginia taxable income. See W. Va. Code § 11-21-4(a) (1961, c. 155); W. Va. Code §§ 11-21-3 and 11-21-4(a), as amended by Committee Substitute for Senate Bill No. 310. A distinction has historically been made, however, between individuals and estates and trusts when determining West Virginia taxable income. See W. Va. Code § 11-21-11 defining West Virginia taxable income of resident estates or trusts (1961, c. 155); § 11-21-31, defining West Virginia taxable income of nonresident individuals (1961, c. 155); § 11-21-38 defining West Virginia taxable income of nonresident estates or trusts (1961, c. 155). Consequently, our position is entirely consistent with the historical treatment of individuals, estates and trusts.

With passage of Committee Substitute for Senate Bill No. 310, the tax law for the first time distinguishes between individuals, estates and trusts on one hand and heads of household on the other hand. Previously, the West Virginia taxable income of all these persons was taxed under the same classification and rate table. See W. Va. Code § 11-21-4c(a). With enactment of Committee Substitute for Senate Bill No. 310, however, heads of household are placed into a separate classification and taxed under a separate rate table. W. Va. Code § 11-21-4d(b). See also Title to Committee Substitute for Senate Bill No. 310. Individuals, estates and trusts continue to belong to the same classification and are taxed under the same rate table. W. Va. Code § 11-21-4d(a). Consequently, the reference in W. Va. Code § 11-21-3(a)(2) is to three classes of taxpayers: individuals, heads of households and married couples filing joint returns.

Any alleged drafting imperfection cannot be used to circumvent Legislative intent to impose the twelve percent temporary surtax on all W. Va. Code § 11-21-4d(a) taxpayers having West Virginia taxable income in excess of \$10,000.

In conclusion, estates and trusts are subject to the twelve percent surtax on West Virginia taxable income in excess of \$10,000 for the period April 1, 1983 through June 30, 1985.
