



Nonresident Lawyers — Tax Reporting And Filing Requirements

This publication describes the tax reporting and payment responsibilities which would apply to attorneys at law and law firms located and domiciled outside West Virginia, and to their employees who enter into the State of West Virginia for the purpose of practicing law or conducting business related to the practice of law in West Virginia.

It appears that there are three main types of activity which are undertaken in the State of West Virginia by nonresident lawyers and nonresident law firms for the purpose of practicing law in West Virginia or conducting business related to the practice of law in West Virginia.

(1) Attorneys having their offices outside the State of West Virginia accept contingency fee personal injury cases within the State of West Virginia. These attorneys do not maintain a regular active office in the State of West Virginia and associate themselves with local legal counsel for the purpose of pursuing West Virginia cases. These nonresident attorneys or their representatives may enter into West Virginia for the purpose of taking depositions, consulting with local legal counsel and clients, preparing documents, conducting discovery, attending court proceedings, and engaging in settlement negotiations and for trials, or other work in West Virginia.

(2) Attorneys who have offices outside of the State of West Virginia, but accept work that would entail a presence in West Virginia on an hourly fee or other fee basis. These nonresident attorneys or their law firms send their attorneys into West Virginia for relatively short periods of time for the purpose of taking depositions, consulting with local legal counsel and clients, conducting discovery, attending court proceedings, and engaging in settlement negotiations and for trials or other work in West Virginia.

(3) Attorneys having their offices outside of the State of West Virginia, who do not maintain offices in West Virginia or actively advertise in West Virginia, enter into West Virginia and rent office space, either from local attorneys or from other landlords. These attorneys or law firms send lawyers into West Virginia for substantial periods of time in order to conduct discovery and prepare for trials of pending cases.

(1) **West Virginia Business Registration Tax** - The nonresident attorney or law firm should file a form WV/BUS-APP for the purpose of registering in the State to pay tax. W. Va. Code §11-12. This form should be filed even though the nonresident attorney or law firm will only be in the State of West Virginia for a few days or for a very short time to complete work in West Virginia.

(2) **West Virginia Business Franchise Tax** - If the nonresident law firm is a corporation or partnership, the law firm would be liable for the West Virginia business franchise tax. The amount of tax payable would be calculated based upon the apportioned capital base of the firm. W. Va. Code §11-23. Apportionment is typically based upon the West Virginia four factor formula consisting of a property factor, a payroll factor and a double weighted sales factor. However, should it appear that the statutory apportionment method does not accurately reflect the extent of the business activity in West Virginia, the Tax Commissioner may require use of, or the taxpayer may petition for, an alternative apportionment method.

Should the nonresident law firm wish to do so, the firm could apply to the West Virginia State Tax Department for use specific accounting to apportion its tax base to the State of West Virginia instead of the typically applied four factor formula. The taxpayer would be required to apply for authorization to use specific accounting to apportion its tax base before the unextended due date of the annual franchise tax return for the tax year for which West Virginia reporting is required.

(3) **West Virginia Corporation Net Income Tax** - If the law firm is a corporation, the corporation would be liable for the West Virginia corporation net income tax. W. Va. Code §11-24. The amount of tax payable would be calculated based upon the corporation's federal taxable income adjusted for certain increasing and decreasing modifications and then allocated and apportioned to the State of West Virginia. Apportionment would typically be based upon the West Virginia four factor formula consisting of a property factor, a payroll factor and a double weighted sales factor. However, should it appear that the statutory apportionment method does not accurately reflect business activity in West Virginia, the Tax Commissioner may require use of, or the taxpayer may petition for, an alternative apportionment method. Note that Limited Liability Companies are treated as C corporations, partnerships or disregarded entities for West Virginia tax purposes based on the treatment established by the Internal Revenue Service for the entity for federal income tax purposes.

Should the nonresident law firm wish to do so, the law firm could apply to the West Virginia State Tax Department to use specific accounting to apportion its income to the State of West Virginia instead of the typically applied four factor formula. The taxpayer would be required to apply for authorization to use special accounting before the unextended due date of the annual corporation net income tax return for the tax year for which West Virginia reporting is required.

(4) **West Virginia Personal Income Tax on partnership and S corporation income** - If the law firm is a partnership or S corporation, the partners of the partnership or shareholders of the S corporation will be required to pay the West Virginia personal income tax on West Virginia source income. W. Va. Code §11-21. The partnership or S corporation could be required to withhold West Virginia personal income tax on actual and deemed distributions of West Virginia source income to partners or

shareholders. W. Va. Code §11-21-71a. Should the partners or shareholders choose, the partners or shareholders may execute certain West Virginia State Tax Department forms and documents which will permit the partners or shareholders to pay estimated tax payments to the State of West Virginia in lieu of the withholding by the partnership or S corporation. Note that Limited Liability Companies are treated as C corporations, partnerships or disregarded entities for West Virginia tax purposes based on the treatment established by the Internal Revenue Service for the entity for federal income tax purposes.

(5) **West Virginia Consumers Sales and Service Tax** - The nonresident attorney or law firm and its personnel would be expected to pay the West Virginia consumers sales and service tax on tangible personal property purchased in the State. W. Va. Code §11-15. Purchases of tangible personal property and taxable services used by an attorney or law firm in the practice of law in West Virginia are subject to the West Virginia consumers sales and service tax or the West Virginia use tax, as appropriate. However, the professional services provided by the attorney or law firm to clients would not be subject to the West Virginia consumers sales and service tax because professional services are not taxable under the West Virginia consumers sales and service tax statute. W. Va. Code § 11-15-8.

(6) **Local Hotel Motel Tax** - The nonresident attorney or law firm or the personnel of the attorney or law firm (the vendee) could be liable for the hotel motel tax on temporary hotel or motel accommodations if the county or municipality in which they are staying imposes the tax. W. Va. Code §7-18.

(7) **West Virginia Personal Income Tax on Employees** - Attorneys and other employees of the nonresident attorney or law firm would be required to pay the West Virginia personal income tax on the income earned in West Virginia. W. Va. Code §11-21-31. The amount of West Virginia taxable income would be based upon federal adjusted gross income, with certain adjustments.

If the employee's state of residence also imposes personal income tax on income earned in the State of West Virginia, the state of residence may grant an income tax credit against its tax for the amount of income tax payable to West Virginia, or may offset the amount of taxable income by the amount of income earned in West Virginia. The jurisdiction of residence has priority over the state in which the income is earned to tax such income due to the greater nexus of the state of residence.

The amount of income allocated and apportioned to West Virginia would be determined based upon specific accounting, or in the case of salary income, the amount apportioned to West Virginia based upon the portion of the year during which the employee was working in West Virginia calculated on the basis of the number of days spent in West Virginia.

Subject to certain limitations, a nonresident may be allowed a credit against the West Virginia personal income tax otherwise due for any income tax imposed by the Taxpayer's state of residence, if there is an agreement between the State of West Virginia and the state of residence allowing such treatment. W. Va. Code §11-21-40. To determine what states have entered into such an agreement with West Virginia, contact the Taxpayer Services Division of this Department at (304) 558-3333.

In some cases a nonresident who earns salary, wages, or compensation for personal services performed in West Virginia is not required to file a West Virginia personal income tax return if the employee's salary, wages or compensation is subject to income tax substantially similar to the West Virginia tax in the state of residence, and the laws of the state of residence contain a substantially similar exception for West Virginia residents. W. Va. Code §11-21-41.

If the employees are domiciled outside of West Virginia and remain in West Virginia for fewer than 184 days out of their tax year, they will be required to report the personal income on the West Virginia nonresident personal income tax return. If they remain in West Virginia for 184 or more days out their tax year, they will probably be required to report the personal income on the West Virginia resident income tax return. W. Va. Code §11-21-7.

If an employee expects to earn, in West Virginia, West Virginia adjusted gross income not subject to withholding of more than four hundred dollars plus the sum of the West Virginia personal income tax exemptions to which the individual is entitled, the employee would be required to file and pay estimated tax payments in West Virginia, and a declaration of estimated tax. W. Va. Code §11-21-55.

(8) **West Virginia Withholding Tax** - The employer attorney or law firm would probably not be required to withhold West Virginia personal income tax from its employees unless the employer has an office or other facility in West Virginia, or is substantially transacting business in West Virginia. W. Va. Code §11-21-71. Except for the most transient and minor employee presence in West Virginia, a business which has employees working in West Virginia will be considered to be substantially transacting business in West Virginia for purposes of this provision. However, the employer may wish to voluntarily establish a withholding account with the West Virginia Tax Department as service and convenience to its employees. If this were done, the employees would be relieved of the duty to file and pay estimated tax payments (discussed above) to West Virginia.

Partners or shareholders of a nonresident law firm organized as a partnership or S corporation may seek the approval of the West Virginia State Tax Department to file a composite personal income tax return for the partners or shareholders of the business and to remit the tax based on the composite filing, thereby relieving the partners or shareholders of the duty to file individual resident or nonresident personal income tax returns with the State of West Virginia.

Employees of a nonresident attorney or law firm who work in West Virginia for a short time during the taxable year will typically be required to file a regular nonresident personal income tax return for their West Virginia source income, as discussed above.

Municipal License Tax, Municipal Service Fees and User Fees and Municipal Business and Occupation Tax - This advisory does not address whether the nonresident attorney or law firm would incur any liability for the municipal business and occupation tax or the municipal license tax or for municipal service fees or user fees. The taxability of the nonresident attorney or law firm for these taxes would depend upon the ordinances of the particular municipalities in which the nonresident attorney or law firm may operate.

It would be prudent for the nonresident attorney or law firm to make inquiries of the taxing authorities of the particular municipalities in which the nonresident attorney or law firm will be operating as to whether these taxes might apply and the tax rates and other requirements that might apply.

County Property Tax - This advisory does not address the issue of county property tax which might be assessed upon the equipment and other tangible personal property and realty (if any) of a nonresident attorney or law firm. The assessment day for property taxes in West Virginia is the first day of July of each year. If property is located in a West Virginia county on that date, such property is typically subject to the local property tax.

It would be prudent for the nonresident attorney or law firm to inquire with the county property assessor for each county in which the nonresident attorney or law firm will have property with regard to the property tax requirements of the county.

Registration with the West Virginia Secretary of State - This advisory does not address whether any requirement may apply for the nonresident attorney or law firm to register with the West Virginia Secretary of State to operate in West Virginia.

West Virginia Employment Security Tax - This advisory does not address the potential liability of the nonresident attorney or law firm for employment security tax (unemployment tax) or any responsibility of the nonresident attorney or law firm to register with the West Virginia Division of Employment Programs.

West Virginia Workers' Compensation Insurance - This advisory does not address the applicability of the West Virginia workers' compensation insurance to the nonresident attorney or law firm or any responsibility of the nonresident attorney or law firm to register with the West Virginia Workers' Compensation insurer, Brickstreet Insurance, and the West Virginia Insurance Commission.

Registration with the West Virginia Division of Labor - This advisory does not address any requirement which might apply for the nonresident attorney or law firm to register with, or to post a bond with the West Virginia Division of Labor.

Registration with the Office of the Auditor of West Virginia - This advisory does not address whether the nonresident attorney or law firm may have any responsibility to register with the Office of the Auditor of West Virginia.

Registration with the West Virginia State Bar, The Supreme Court Of Appeals of West Virginia or the Local Courts - This advisory does not address whether the nonresident attorney or law firm may have any responsibility to register with or obtain qualification with or from the West Virginia State Bar, The West Virginia Supreme Court Of Appeals or the Local Courts in which the attorney may seek to practice.

It would be prudent for the nonresident attorney or law firm to inquire of these agencies with regard to their requirements. Their addresses and telephone numbers are as follows

The West Virginia Secretary of State
Building 1, Suite 157K
1900 Kanawha Blvd., E.
Charleston, WV 25305-0770
Telephone (304) 558-8000
Fax (304) 558-0900
<http://www.sos.wv.gov>

Workforce West Virginia
Unemployment Compensation Division
112 California Ave.
Charleston, WV 25305-0112
Telephone (304) 558-2624
Fax (304) 558-1022
<http://www.wvcommerce.org>

West Virginia Insurance Commission
1124 Smith St., Rm. 102
Charleston, WV 25301
Telephone (304) 558-2100
Facsimile (304) 558-1365
<http://www.wvinsurance.gov>

West Virginia Division of Labor
State Capitol Complex
Bldg 6, Rm. B749
1900 Kanawha Blvd., E.
Charleston, WV 25305
Phone (304) 558-7890
Fax (304) 558-2415
<http://www.wvlabor.org>

The West Virginia State Auditor
Bldg. 1, Rm. W100
1900 Kanawha Blvd., E.
Charleston, WV 25305
Telephone (304) 558-2261
Toll Free 877.982.9148
Fax (304) 558-5200
<http://www.wvsao.gov>

The West Virginia State Bar
2006 Kanawha Boulevard, East
Charleston, WV 25311-2204
Telephone-(304)558-2456
WV Toll Free Phone-(866)989-8227
Fax (304)558-2467/
<http://www.wvbar.org>

The Supreme Court of Appeals of West Virginia
Administrative Office of the Courts
Capitol Complex
Building 1, Room E-100
Charleston, WV 25305-0830
Telephone (304) 558-0145
Fax (304) 558-1212
<http://www.courtswv.gov>

West Virginia State Tax Department
Compliance and Taxpayer Services Division
P. O. Box 3784
Charleston, West Virginia 25337-3784

Telephone: (304) 558-3333
Toll free : 1-800-WVA-TAXS (1-800-982-8297)

Visit our web site:

<http://www.state.wvtax.gov>

TDD service for the hearing impaired: 1-800-2TAXTDD (1-800-282-9833)