



This publication provides general information and is not meant to be a substitute for tax laws or regulations.

For nonresidents, wage income is sourced to West Virginia to the extent that the work of the employee was performed in West Virginia.

A nonresident's income from wages for work performed in West Virginia can include income from severance pay, equity-based awards and other non-statutory deferred compensation. When these payments are assigned to West Virginia, they are subject to West Virginia personal income tax and withholding.

1. **Severance pay** is allocated to West Virginia to the extent that work connected with the employment from which the payment is received was performed in West Virginia.
2. **Equity-based awards** are allocated to West Virginia based upon where the award was granted and exercised, as well as the percentage of work done in West Virginia during the vesting period of the award. This also assumes that stock options that may comprise the equity-based award do not have a readily ascertainable fair market value on the date they are granted.
3. **Other non-statutory deferred compensation** is allocated to West Virginia in the ratio of days worked in West Virginia during the "allocation period" to the total number of days worked for the employer during the "allocation period."

Guaranteed payments to current partners should be treated like distributive share for West Virginia personal income tax purposes, whether the partner is a resident or nonresident partner. Withholding is required on guaranteed payments to nonresident partners unless they are included in a composite return. While for federal income tax purposes guaranteed payments to retired partners are also treated as distributive share, when those payments are retirement income paid to a nonresident retired partner, West Virginia is prohibited from taxing any portion of the retirement income when it is properly classified under 4 U.S.C. § 114(b)(1)(I).

This rule does not apply to payments received on the sale of stock purchased through statutory stock options or payments from qualified deferred compensation plans.

Qualified deferred compensation plans include regular defined benefit pensions, 401(k), IRA, and 457 plans. Either these payments are not "wages," or the payments are prohibited from state taxation by federal law when paid to nonresidents. The allocation period is the period of time during which the employee accrued the right to the deferred compensation.

Nonresident Mobile Employees

The West Virginia taxable income of a nonresident individual is the sum of the net amount of income, gain, loss and deduction entering into his or her federal adjusted gross income for the taxable year which is derived from or connected with West Virginia sources. Effective January 1, 2022, West Virginia sourced income for certain nonresident mobile employees is excluded for West Virginia personal income tax purposes if all the following conditions apply:

1. The nonresident employee is compensated for employment duties performed in West Virginia by the individual for thirty (30) or fewer days in a calendar year. The 30-day count need not consist of consecutive days.
2. The nonresident employee performed employment duties in more than one state during the calendar year;
3. The nonresident employee is not compensated for employment duties performed by the individual as a professional athlete, professional entertainer, or public figure; and
4. The nonresident employee's state of residence:
 - a. Provides a substantially similar exclusion; or
 - b. Does not impose an individual income tax; or
 - c. The individual's income is exempt from taxation under federal law.

An employer is not required to withhold taxes for a nonresident mobile employee whose income is exempted from state source income unless the individual spends more than thirty (30) days during the calendar year performing employment duties in this State. In that case, the employer would withhold and remit tax to this State for every day in that calendar year, including the first thirty (30) days, on which the individual performs employment duties in this State.

Definitions

For purposes of this exclusion, the following definitions apply:

“Professional athlete” means an athlete who performs services in a professional athletic event for compensation;

“Professional entertainer” means a person who performs services in the professional performing arts for compensation on a per-event basis;

“Public figure” means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for compensation on a per-event basis.

Withholding Taxes By Employer

An employer is not required to withhold taxes for a nonresident mobile employee whose income is exempted from state source income unless the individual spends more than thirty (30) days during the calendar year performing employment duties in this State. In that case, the employer would withhold and remit tax to this State for every day in that calendar year, including the first thirty (30) days, on which the individual performs employment duties in this State.

Liability Determined

If an employer maintains a time and attendance system that tracks where a nonresident employee performs services daily, then data from the time and attendance system shall be used.

In all other cases, an employer shall obtain a written statement from the nonresident employee of the number of days reasonably expected to be spent performing services in this State during the taxable year.

The certification made by the nonresident employee and maintained in the employer’s books and records shall be prima facie evidence and constitute a rebuttable presumption of the number of days spent performing services in this State.

A nonresident employee shall be considered present and performing employment duties within this State for a day if the individual performs more employment duties in this State than in any other state during that day.

Any portion of the day during which a nonresident employee is in transit shall not be considered in determining the location of an individual’s performance of employment duties.

For more information, you can:

- **Call** a Taxpayer Services Representative at (304)558-3333 or toll-free at (800) 982-8297
- **Email** taxhelp@wv.gov
- **Go Online** to tax.wv.gov