



NONRESIDENT EMPLOYER WITHHOLDING TAX

This publication is intended to help you become more familiar with West Virginia personal income tax laws and your rights and responsibilities under the laws. Nothing in this publication supersedes, alters or otherwise changes any provisions of the tax law, administrative rules, court decisions or administrative notices.

GENERAL INFORMATION

- Out-of-State employers that have employees working in West Virginia are required to withhold West Virginia personal income tax from employee compensation paid to the employee unless an exemption from withholding applies.
- Every employer transacting business or maintaining an office within the State of West Virginia and paying any wages subject to West Virginia personal income tax to a resident or nonresident individual is required to deduct and withhold from such wages for each payroll period the West Virginia employer withholding tax. W. Va. Code § 11-21-71(a).
- It makes no difference whether the employee is a permanent employee, temporary employee, or part-time employee of the employer.
- It makes no difference whether the employee's base of operations is outside West Virginia or that the employee's activity in West Virginia is in business only on a temporary basis or a periodic basis. West Virginia does not have a 30-day safe harbor. The employee does not have to be a resident of West Virginia for withholding of West Virginia income tax to be required.

WHEN WITHHOLDING IS NOT REQUIRED

- Withholding is not required when:
 1. The nonresident employee is a member of the Armed Forces of the United States. This exception does not apply to pay to members of the National Guard while participating in exercises or performing duty under 32 U.S.C. §502, and on pay to members of the ready reserve while participating in scheduled drills or training periods or serving on active duty for training under 10 U.S.C. §270(a), as provided in the agreement with the Secretary of the United States Treasury executed as provided in 5 U.S.C. §5517.
 2. The employee is a bona fide resident of Kentucky, Maryland, Ohio, Pennsylvania, or Virginia because West Virginia has a reciprocal agreement with those states.

WITHHOLDING EXEMPTIONS

- Prior to the Tax Cuts and Jobs Act of 2017, a nonresident employee could apply the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he or she would have been entitled for federal income tax withholding purposes. See W. Va. Code § 11-21-71(b)(1). However, the Tax Cuts and Jobs Act of 2017 removed exemptions from the federal return calculation. Therefore, West Virginia now requires the completion of the WV IT-104, West Virginia Employee's Withholding Exemption Certificate to be retained in the employee's file.

INDEPENDENT CONTRACTORS

- A nonresident employer or a resident employer who claims that an individual is an independent contractor rather than an employee will owe 6% consumers sales and use taxes measured by the compensation paid to the individual for services rendered in West Virginia. When the services are provided in a municipality that imposes a municipal sales and use tax collected by the Tax Commissioner, the employer will also owe municipal sales and use taxes on the same compensation.

ASSISTANCE AND ADDITIONAL INFORMATION

- For assistance or additional information, you may call a Taxpayer Service Representative at:

**1-800-WVA-TAXS
(1-800-982-8297)**

Or visit our website at:

www.tax.wv.gov

Email questions to:

taxhelp@wv.gov