

Income/Franchise:

West Virginia: New Law Adopts Single Sales Factor, Market-Based Sourcing and Mobile Workforce Provisions

H.B. 2026, signed by gov. 4/9/21. Newly enacted legislation incorporates a number of significant tax-related provisions for West Virginia corporation net income tax purposes, including:

URL: https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2026&year=2021&sessiontype=RS

- Moving from a three-factor apportionment formula consisting of property, payroll and double-weighted sales to a single-sales factor formula;
- Eliminating the sales factor “throw-out” rule for certain sales of tangible personal property; and
- Adopting market-based sourcing for certain receipts derived from services and intangible property in place of its “costs of performance” sourcing methodology.

With respect to mobile workforces, the legislation additionally adopts a bright-line 30-day threshold for employers to determine nonresident state income tax withholding requirements. Specifically, under these new provisions, compensation paid to nonresident employees generally are excluded from West Virginia source income provided:

- The compensation is paid for duties performed in West Virginia for 30 or fewer days during the calendar year;
- The employee performed duties in more than one state during the calendar year;
- The employee was *not* providing service as a professional athlete, professional entertainer, or public figure; and
- The employee’s state of residence either provides a similar exclusion or does not impose an income tax, or the employee’s income is otherwise exempt from taxation by that state under the US Constitution or federal statute.

See recently issued Multistate Tax Alert for more details on these law changes, as well as related taxpayer considerations, and please contact us with any questions.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-west-virginia-adopts-single-factor-sales-and-market-sourcing-apportionment.pdf>

— Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

John Paek (Atlanta)
Principal
Deloitte Tax LLP
jpaek@deloitte.com

Meredith Harper (Birmingham)
Senior Manager
Deloitte Tax LLP
meharper@deloitte.com

Ashley Higgins (McLean)
Senior Manager
Deloitte Tax LLP
ashiggins@deloitte.com

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