

House Bill 2026

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- Signed into law by Governor Justice on April 9, 2021
- Generally effective beginning **January 1, 2022**
- Changes to present law include:
 - Withholding exemptions for mobile workers
 - Adopts market-based sourcing rules
 - Adopts single-sales factor apportionment for corporate income tax purposes
 - Eliminates West Virginia's "throwout rule"
- WV Code Sections impacted
 - Section 11-24-7, amended
 - Section 11-21-31, new



Withholding Exemptions for Mobile Workers

- WV joins 32 states and the District of Columbia in adopting similar withholding exemptions.
- Applies to employees meeting all of the following conditions:
 - Duties performed for 30 or fewer days
 - Not paid for employment duties performed by professional athletes, professional entertainers, or public figures
 - The nonresident individual's state of residence provides a substantially similar exclusion, does not impose an income tax, or their income is exempt from taxation



Withholding Exemptions for Mobile Workers

- Withholding required if the number of days spent performing employment duties exceeds the thirty day threshold.
 - Employer required to withhold and remit tax for every day in the calendar year that duties are performed in this state
 - Includes the first thirty days



Withholding Exemptions for Mobile Workers

- Determining liability
 - Employer maintained time and attendance system
 - Records the work location of the employee for every day worked outside of the state
 - Designed to allow the employer to allocate wages for income tax purposes among all states where employment duties are performed
 - Written statement from the employee
 - May be relied upon by the employer
 - Must be maintained in the employer's books and records
 - Constitutes a rebuttable presumption of the number of days spent performing services in the state



Market-Based Sourcing

- WV joins 32 states and the District of Columbia in adopting market-based sourcing
- Applies to sales other than tangible personal property (e.g. services and intangible property)
- Cost-of-performance contrasted with market-based sourcing
 - Where were services performed versus
 - Where were services/benefits consumed or used



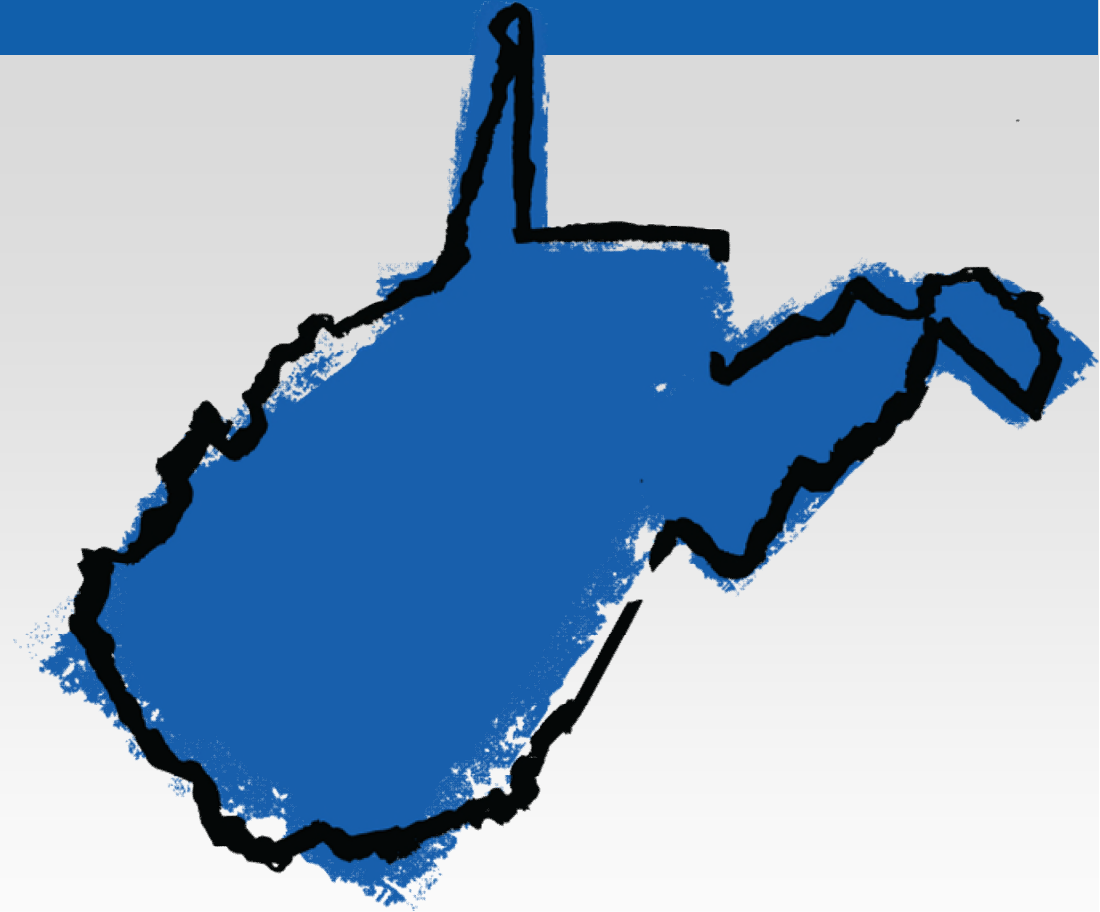
Market-Based Sourcing

- Sourcing of sales other than tangible personal property through December 31, 2021
 - Income-producing activity is performed in WV, or
 - Income-producing activity is performed both within and without WV and a greater proportion of the activity is performed in WV based on cost of performance, or
 - Financial organizations (Sec. 11-24-7b)
- Cost of performance means direct costs determined in a manner consistent with GAAP and in accordance with accepted conditions or practices of the taxpayer's trade or business.



Market-Based Sourcing

- Sourcing of sales other than tangible personal property on or after January 1, 2022
 - Services – delivered to a location in WV
 - Intangible property that is rented, leased, or licensed, are sourced to WV if and to the extent the property is used in WV
 - Includes sales that are contingent on productivity, use, or disposition
 - Intangible property used in marketing goods or services to consumers are considered used in WV if that good or service is purchased by a consumer in WV



Market-Based Sourcing

- Sourcing of sales other than tangible personal property on or after January 1, 2022
 - Intangible property that consists of a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is “used in this state” if the geographic area includes all or part of WV
 - All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor



Market-Based Sourcing

- **Example:** A taxpayer providing accounting services in West Virginia for a client in Ohio, would allocate the gross receipts to Ohio since that is where the benefit of services was received
- **Winners** – WV taxpayers with significant out-of-state sales
- **Losers** – Non-WV taxpayers with significant in-state sales
- **Double Losers** – Taxpayers based in cost of performance states with sales into market-based states – potential for double tax



Single-Sales Factor Apportionment

- States look for ways to apportion income of taxpayers with multi-state activities
- Replaces WV's three-factor apportionment formula using double weighted sales factor
 - Property
 - Payroll
 - Sales/Revenues
- WV joining 29 states and the District of Columbia in applying single-factor apportionment



Single-Sales Factor Apportionment

- Effective for tax years beginning on or after January 1, 2022
- The State Tax Department anticipates this change to be revenue neutral



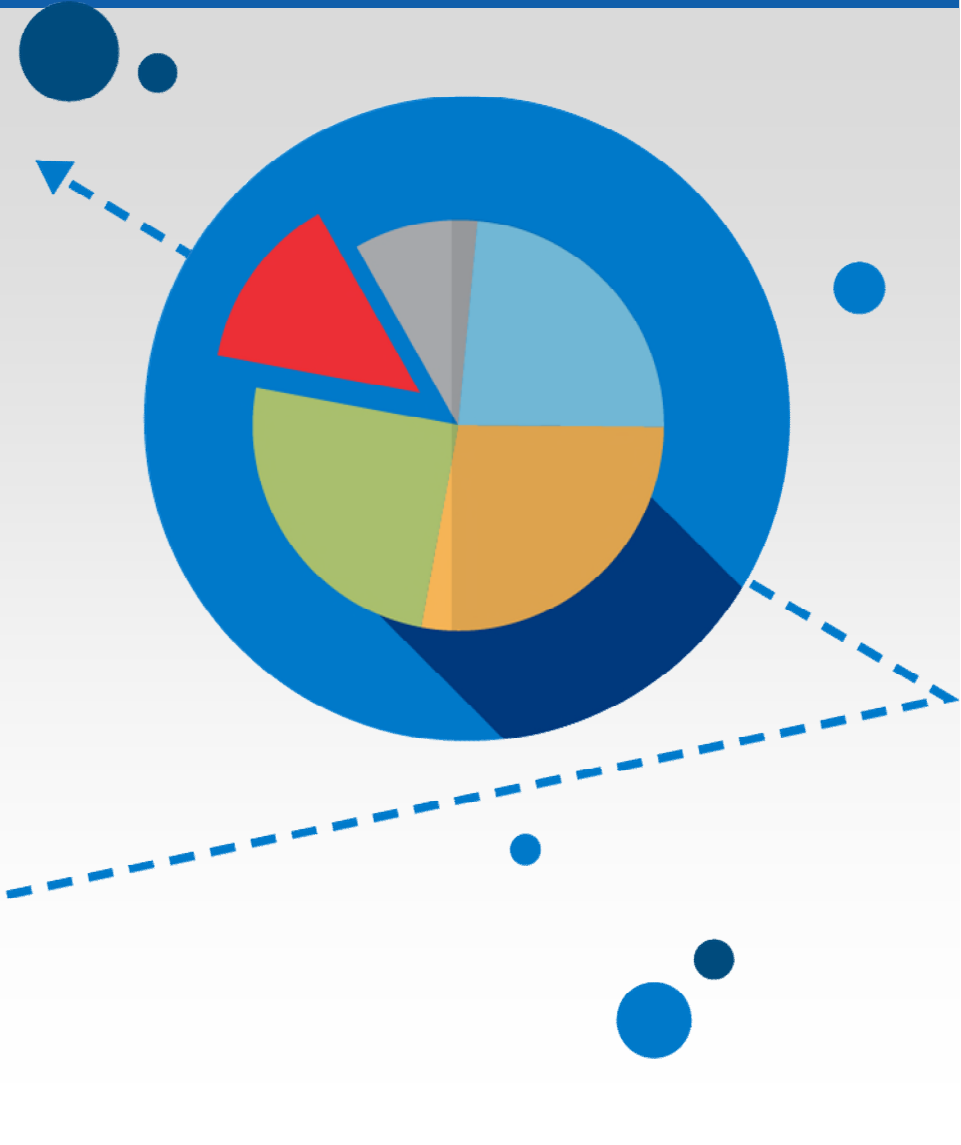
Single-Sales Factor Apportionment

- **Winners** – WV based taxpayers with substantial sales outside the state
- **Winners** – Payroll and/or capital intensive WV based taxpayers
- **Losers** – Those not considered winners



Elimination of the Throwout Rule

- Throwout rule eliminates from the denominator of the sales factor all destination sales to those states in which the taxpayer is not taxed
- Only 3 states currently have a throwout rule – Louisiana, Maine, and West Virginia
- Elimination effective for sales made on or after January 1, 2022



Questions



Thank You for Joining Us

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