

## Income/Franchise:

### West Virginia: Administrative Guidance Addresses Employer Withholding Under Mobile Workforce Provisions

TSD 437, W.Va. Tax Div. (rev. 7/24). Pursuant to legislation enacted in 2021 that adopted a general 30-day “safe harbor” threshold for employers to determine nonresident state income tax withholding requirements under certain circumstances [see H.B. 2026 (2021), and previously issued Multistate Tax Alert for more details on this legislation], recently updated guidance from the West Virginia Tax Division explains that 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 30 days during the calendar year performing employment duties in West Virginia. The guidance also explains that 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.” Moreover, the guidance provides that 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,” and that “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.” Please contact us with any questions.

[URL: https://tax.wv.gov/Documents/TSD/tsd437.pdf](https://tax.wv.gov/Documents/TSD/tsd437.pdf)

[URL: https://www.wvlegislature.gov/Bill\\_Status/bills\\_history.cfm?INPUT=2026&year=2021&sessiontype=RS](https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2026&year=2021&sessiontype=RS)

[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](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-west-virginia-adopts-single-factor-sales-and-market-sourcing-apportionment.pdf)

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