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IMPORTANT INFORMATION FOR 2023

SB 151 (2023 Regular Legislative Session) created an elective pass-through entity tax retroactive to Tax Year 2023. This new pass-through entity tax is meant to comply with the provisions of IRS Notice 2020-75.

The elective pass-through entity tax is a tax imposed directly upon the income of the entity, defined as the resident pass-through entity owners' income plus the apportioned nonresident pass-through entity owners' income. The pass-through entity tax is filed and paid instead of the nonresident withholding due with the Elective Pass Through Entity tax return. Any entity that elects to pay the pass-through entity tax will no longer be obligated to file the Pass Through Entity tax return. This election is required to be made for each subsequent tax year.

TAX RATES

- The elective tax is equal to the top marginal rate for individuals. For Tax Year 2023, the rate is 5.12%.
- Taxpayers who had annual remittance of any single tax equal to or greater than \$50,000 during the fiscal year are required to make payments using Electronic Funds Transfer (EFT) for periods beginning on or after January 1, 2019. (11-10-5z)
- Failure to comply with the requirement to remit payments by EFT without first obtaining a waiver may result in a civil penalty of 3 percent of each payment that was to be paid by EFT. Visit our website at www.tax.wv.gov for additional information.

RETURNED PAYMENT CHARGE

The Tax Division will recover a \$15.00 fee associated with any returned bank transactions. These bank transactions include but are not limited to the following:

- Direct Debit (payment) transactions returned for insufficient funds.
- Stopped payments.
- Bank refusal to authorize payment for any reason.
- Direct Deposit of refunds to closed accounts.
- Direct Deposit of refunds to accounts containing inaccurate or illegible account information.

Checks returned for insufficient funds will incur a \$28.00 fee.

The fee charged for returned or rejected payments will be to recover only the amount charged to the Tax Division by the financial institutions.

Important: There are steps that can be taken to minimize the likelihood of a rejected financial transaction occurring:

- Be sure that you are using the most current bank routing and account information.
- If you have your tax return professionally prepared, the financial information used from a prior year's return often pre-populates the current return as a step saver. It is important that you verify this information with your tax preparer by reviewing the bank routing and account information from a current check. This will ensure the information is accurate and current in the event that a bank account previously used was closed or changed either by you or the financial institution.
- If you prepare your tax return at home using tax preparation software, the financial information used from a prior year return often pre-populates the current return as a step saver. It is important that you verify this information by reviewing the bank routing and account information from a current check. This will ensure the information is accurate and current in the event that a bank account previously used was closed or changed either by you or the financial institution.
- If making a payment using MyTaxes, be sure that the bank routing and account number being used are current.
- Be sure that funds are available in your bank account to cover the payment when checks or delayed debit payments are presented for payment.

TAXPAYER RESPONSIBILITIES

FILING YOUR BUSINESS TAX RETURNS

MyTaxes will be the only option to file elective returns for tax year 2023.

Returns must be filed even if no tax is owed for the reporting period. Failure to file returns will result in your account being referred to our Compliance Division for corrective action. All pages of the return must be filed.

PAYMENT OF THE TAX

The full amount of tax owed is due and payable on the original due date of the tax return. Failure to pay the full amount of tax by the due date will result in interest and penalties being added to any unpaid amount of tax. If for any reason you are unable to pay the full amount of tax on the due date, you should file your tax return along with a written explanation of why you are unable to pay and when you will pay the tax due.

REFUNDS

You are entitled to a refund of any amount that you overpaid. All or part of any overpayment may be applied as a credit against your liability for such tax for other periods. A claim for refund (usually a tax return showing an overpayment) must be filed within three years of the due date of the return or two years from the date the tax was paid, whichever expires later. The overpayment will be used by the Tax Department against other tax liabilities due.

SELLING OR DISCONTINUING YOUR BUSINESS

If you sell or discontinue your business, notify the Tax Division in writing as soon as possible after your business is sold or discontinued. All final tax returns should be filed.

GENERAL INFORMATION

The information in this booklet is for calendar year 2023 returns and for fiscal year returns beginning in 2023 and ending in 2024. The information in this book is intended to help you complete your returns and is not a substitute for tax laws and regulations.

ASSISTANCE

Address questions to the West Virginia Tax Division, Taxpayer Services, PO Box 3784, Charleston, WV 25337-3784 or by telephone at (304) 558-3333, toll-free at 1-800-982-8297.

EXEMPT ORGANIZATIONS

Any S Corporation or Partnership exempt from federal income tax is also exempt from West Virginia income tax. In addition, certain insurance companies, certain production credit associations, trusts established under 29 U.S.C. 186, and other organizations specifically exempt under the laws of West Virginia are also exempt.

WHEN TO FILE AND PAY

For calendar year taxpayers, the election is due on or before March 15th. Under Administrative Notice 2023-01, a special rule applies to Tax Year 2022 that requires the election be made between June 8 and September 15, 2024. Fiscal and 52/53-week returns will be due on the 15th day of the third month following the close of the taxable year with an extension period of six months.

WHO MUST FILE

The following Partnerships may elect to file an Elective Pass Through Return instead of the PTE-100 Return:

- Resident Partnerships,
- Non-Resident Partnerships having a partner who is a resident of West Virginia, or
- Non-Resident Partnerships having any income from or connected with West Virginia sources regardless of the amount of such income.

Income from or connected with West Virginia is those items attributable to (a) the ownership of any interest in real or tangible personal property in West Virginia; or (b) a business, trade, profession, or occupation carried on in West Virginia including income from intangible personal property employed in such business, trade, profession, or occupation unless it elects to be taxed under subchapter S of the Internal Revenue Code.

The term "Partnership" includes syndicates, pools, joint ventures, or any other unincorporated organization of two or more persons through which any business, trade, profession, occupation, or venture is carried on. "Resident Partnership" means any partnership organized under the laws of West Virginia whose principal office, place of business, or other activity is within the borders of West Virginia. It may also carry on its business or other activities in other states. "Non-Resident Partnership" means any partnership other than a resident partnership.

A **Limited Liability Company** which is treated like a Partnership for federal income tax purposes will also be treated as such for West Virginia income tax purposes. If it is not treated like a Partnership, it will be taxed as a C Corporation unless it elects to be taxed under Subchapter S of the Internal Revenue Code.

Every corporation electing to be taxed under Subchapter S of the Internal Revenue Code that engages in business in West Virginia or that derives income from property, activity, or other sources in West Virginia must file a West Virginia return.

EXTENSION OF TIME TO PAY FOR THE TAX YEAR 2023

If you are unsure whether you will file the PTE-100 or EPT-100 in an upcoming year, estimated payments should be made on your PTE account. This is only if you are undecided on which form you will be filing.

If you know you will be filing the EPT-100, you should make payments to that account.

For Tax Year 2023 taxpayers, estimated payments are due under the following schedule:

- First three quarters: September 15th
- Final Quarter: December 15th

EXTENSION OF TIME TO FILE

Any S Corporation or Partnership needing an extension of time to file and/or that expects to owe Non-Resident Withholding Tax must submit a web notice, on Mytaxes using their EPT account, on or before the due date of the return. Any S Corporation or Partnership granted an extension of time to file their federal return is granted the same extension of time to file their West Virginia return. Be sure to attach a copy of your federal extension to each tax return to avoid any

penalty for late filing. An extension of time for filing does not extend the time for payment. To avoid interest and additions to tax for late payment, use the EPT account to make an extension payment pending the filing of the annual return.

A state extension of time to file may be obtained, even if a federal extension has not been requested, following the procedure listed above.

WHERE TO FILE

Log into your account on mytaxes.wvtax.gov.

HOW CAN I HAVE MY CPA FILE FOR ME? (THIRD-PARTY ACCOUNT ACCESS)

You may grant your CPA, tax preparer, etc. third-party access through your MyTaxes account.

[MyTaxes](#) offers and encourages a feature that allows a taxpayer to grant a third party (tax preparer, accountant, etc.) access to one or more of their accounts. The taxpayer will also determine the type of access a third party is granted (File and Pay, File only, Pay only or View only).

A third party, that has been granted access by multiple taxpayers, will only require one single logon to access the various accounts for their multiple clients.

Submitting a request for third party access will send your username and email information to the first party, so access may be granted to your logon.

- The following provides instructions for a third party to request access to a client's accounts:
- Select Manage My Profile
- Select the More tab
- Select the Request Third Party Access link, in the Third Party Access section
- Select Id Type and enter Taxpayer Id
- Submit

Note: If the customer indicated on our request is found, they will be sent a notice in [MyTaxes](#) asking them to grant your logon third party access. Once third party access is granted, you will receive a notice indicating which accounts you have been granted access, including the access type.

HOW TO SET UP AN ELECTIVE PASS THROUGH ACCOUNT

1. If you do not have an Elective Pass Through Entity account set up, you may request it through MyTaxes.
2. Log into you account.
3. From the summary tab, find your Pass Through Entity section.
4. Use the Request Elective Pass Through link. If there is not a link, check to see if the Elective Pass Through Entity account has already been created for you.

USE OF FEDERAL FIGURES

All items of income and deductions to be reported on this return are the same as for federal tax purposes and the meaning of all terms are the same, unless otherwise defined.

PENALTY FOR LATE FILING AND FAILURE TO INCLUDE CORRECT INFORMATION

Any S Corporation or Partnership that fails to file and/or include all the correct information on the Elective Pass Through Entity tax return, and on WVK-1 when applicable, by the required filing date is subject to a penalty of \$50.00 for each information return that they failed to file or include correct information on, not to exceed \$100,000.

For additional information about this penalty, see publications TSD-391 on our website at www.tax.wv.gov.

REPORTING WEST VIRGINIA INCOME TAX WITHHOLDING CREDIT

A West Virginia Income Tax Withholding Credit is created when a payment is made by another entity for the benefit of the entity filing this return.

Electronic Filed Returns – If you are claiming a withholding credit you must submit Form WVK-1, NRW-2, or 1099 as part of your electronic return. Only electronically submitted data is acceptable. No PDF attachments will be accepted for claiming a withholding credit. These documents will be used to verify the withholding credits claimed on your return. If withholding is claimed as a result of the Nonresident Sale of Real Estate, the form WV/NRSR and all supporting documentation should be on file with the Tax Division prior to filing the Elective Pass Through Entity tax return (EPT-100). No PDF attachments will be accepted for claiming an NRSR withholding credit. Failure to file the required WV/NRSR, federal Schedule D, and other supporting documents prior to filing the Elective Pass Through Entity tax return will result in return processing delays.

Note: Local or municipal fees cannot be claimed as West Virginia income tax withheld.

RESIDENT AND NONRESIDENT SHAREHOLDER/PARTNER TAX

S Corporations and Partnerships making this election are required to pay West Virginia Income Tax for each Resident and Non-Resident shareholder/partner. The amount to be paid is five and twelve hundredths percent (0.0512) of the Resident and Non-Resident shareholder's/partner's share of the Federal Taxable Income or portion thereof that is derived from or attributable to West Virginia sources, whether such amount is distributed or is deemed to have been distributed for Federal Income Tax purposes. The entire tax is required to be remitted with the West Virginia Elective Pass Through Entity Tax Return (EPT-100) for S Corporation and Partnership.

INFORMATION STATEMENT OF TAX WITHHELD

Every S Corporation or Partnership required to pay tax on Non-Resident shareholders/partners must provide an EK-1 to each shareholder/partner on or before the date it files its West Virginia Elective Pass Through Entity Tax Return. The information statement shall show the amount of WV income subject to tax and the amount of WV Income Tax paid by the S Corporation or Partnership on behalf of the shareholder/partner.

The S Corporation or Partnership is required to submit all income information as it relates to the individual shareholders/partners of the S Corporation or Partnership on the Partner Reports when filing their annual Elective Pass Through Entity tax return.

PERSONAL INCOME TAX REPORTING REQUIREMENTS

IT-140 WEST VIRGINIA PERSONAL INCOME TAX RETURN

The individual shareholder/partner must enclose the EK-1 supplied by the S Corporation or Partnership when filing the IT-140 West Virginia Personal Income Tax Return on paper. If filing electronically, this information will be entered in the tax software program and it will not be necessary to submit any additional paper forms.

S CORPORATION/PARTNERSHIP INCOME (LOSS)

The Elective Pass Through Entity tax return Summary tab is used to report all income (loss) from all activity of an S Corporation or Partnership, but only to the extent that it is taxable to the shareholders/partners. If the S Corporation or Partnership has income (loss) from activity in more than one state, the Elective Pass Through Entity Schedule APT B Apportionment Factor must also be completed.

SHAREHOLDER/PARTNER INFORMATION

The Elective Pass Through Entity tax return, Resident Partner Report, and Nonresident Partner Report are used to identify all shareholders/partners and to account for each shareholder/partner's share of the S Corporation/Partnership's income. They are also used to calculate the amount of tax that is required on the shareholder/partner's share of the S Corporation's/Partnership's income. All individual shareholders/partners are subject to West Virginia personal income tax under the provisions of WV Code Chapter 11, Article 21.

TAXABLE YEAR/METHOD OF ACCOUNTING

You must use the same taxable year and method of accounting as you use for federal tax purposes.

FEDERAL RETURN INFORMATION

A signed, original copy of the first five pages of Federal Form 1120S or 1065 and any supporting documents must be attached to the Elective Pass Through Entity tax return when filed.

INTEREST

You must pay the entire tax due on or before the due date of the tax return (determined without regard for an extension of time to file). If you do not pay the entire tax due on or before the due date, you must pay interest on the amount of the underpayment from the due date to the date paid. Interest is always due, without exception, on any underpayment of tax.

Interest is imposed at an adjusted rate established by the Tax Commissioner. The interest rate will be determined and in effect for periods of six months. Interest rates in effect for various periods are:

07/01/02-12/31/16	9.5	%	01/01/20 – 12/31/20	9.25	%
01/01/17 – 12/31/17	8	%	01/01/21 – 12/31/22	7.75	%
01/01/18 – 12/31/18	8.75	%	01/01/23 – 12/31/23	11.50	%
01/01/19 – 12/31/19	9.75	%	01/01/24 – 12/31/24	13.00	%

ADDITIONS TO TAX

LATE FILING

Additions to tax are imposed for failure to file a return on or before the due date (determined with regard to an extension of time to file). On any amount of tax shown to be due on the return, the addition to tax for late filing of the return is five percent (.05) per month or any part of a month not to exceed twenty-five percent (.25).

LATE PAYMENT

Additions to tax are imposed for failure to pay all tax shown to be due on a return on or before the due date (determined without regard to an extension of time to file). The addition to tax for late payment is imposed at the rate of one-half of one percent (.005) per month or part of a month not to exceed twenty-five percent (.25).

When both the five percent (.05) additions to tax for late filing and the one-half of one percent (.005) additions to tax for late payment are imposed, the maximum monthly percentage is five percent (.05).

COMPLETION AND SIGNATURE

All appropriate sections of the return must be completed. All required supporting documents must be attached. An incomplete return will not be accepted as timely filed and may be rejected as incomplete. The returns must be signed by an authorized officer or partner. If the return is prepared by someone other than the taxpayer, the preparer must also sign the return and enter his or her complete address.

CHANGES MADE BY THE IRS TO FEDERAL RETURN

Any S Corporation or Partnership whose reported income or deductions are changed or corrected by the Internal Revenue Service or through renegotiation of a contract with the United States is required to report the change or correction to the West Virginia Tax Division. Changes made through an Administrative Adjustment Request (AAR) must be submitted to the WV Tax Division within 90 days of the final determination. A copy of the revenue agent's report detailing the adjustments must be included.

PASS THROUGH AMENDED RETURNS

An S Corporation or Partnership that filed an amended return with the Internal Revenue Service **must** file an amended return with the West Virginia Tax Division within **90 days** of filing the amended federal return.

- File the Elective Pass Through Entity tax return, completing all appropriate lines and checking the **Amended** box under "RETURN TYPE" on the Basic Information section. Any amount paid with the original return should be entered on the estimated and extension payments line of the return on the Summary tab.
- If you received a refund or had an amount credited on the original return, enter that amount on the Overpayment previously refunded or credited (amended return only) line of the return on the Summary tab.
- Attach all schedules previously submitted and make any appropriate amended changes.

Amended Returns filed for the purpose of obtaining a refund of an overpayment must be filed within **three years** of the due date of the return (with regard to an extension of time to file), or **two years** from the date the tax was paid, whichever expires later. If your Amended Return has a balance due, send the payment along with the tax return.

CONSISTENCY IN REPORTING

In completing your West Virginia Income Tax Return for S Corporations and Partnerships, if you depart from or modify past procedures for classifying business income and nonbusiness income, for valuing property or including or excluding property in the property factor, for treating compensation paid in the payroll factor, or for including or excluding gross receipts in the sales factor, you must disclose by separate attached schedule the nature and extent of the variance or modification.

If you make sales of tangible personal property which are shipped into a state in which you are not taxable, you must identify the state to which the property is shipped and report the total amount of sales assigned to such state.

CONFIDENTIAL INFORMATION

Tax information that is disclosed to the West Virginia Tax Division, whether through returns or through division investigations, is held in strict confidence by law. The Tax Division, the United States Internal Revenue Service, and other states have agreements under which tax information is exchanged. This is to verify the accuracy and consistency of information reported on federal, other state, and West Virginia returns.

ELECTIVE PASS THROUGH ENTITY TAX RETURN

INSTRUCTIONS

Log into your Mytaxes account.

Find your Elective Pass Through Entity account and use the “**File, Amend, or View Returns**” link.

Under returns, click the “**File Now**” link for the period you want to file.

The first Section will be **Basic Information**.

BASIC INFORMATION

If filing under extension, enter the extended due date.

Provide the first name, last name, phone number, and email address of a contact person to whom questions about the elective return can be directed.

CENTRALIZED AUDIT REGIME - If an entity is elected out of the Centralized Audit Regime under IRC Section 6221(b), check the “yes” box. If not, check the “no” box and complete the representative information in the designated area on page 1. This is only available for entities who registered with the West Virginia Tax Division as a partnership.

Check all boxes that apply to the return being filed.

Part 1 RETURN TYPE – check all that apply (more than one box may be selected).

Part 2 IF FINAL/SHORT PERIOD/INITIAL RETURN – check all that apply.

Part 3 ACTIVITY DESCRIPTION – check the applicable box. Do not check Wholly WV if you are not a WV based entity only doing business in WV.

Part 4 REPORTABLE ENTITIES – check all that apply. Note: if any box is checked in this section, information about the reportable entity must be entered on Schedule D.

Ensure that the **first five pages of Form 1120-S** or the **first six pages of Form 1065** are attached, including Schedule M-3 if applicable.

Please attach any additional information and/or statements as required.

RESIDENT PARTNERS REPORT

Column 1 Partners FEIN/SSN - Enter either the social security number or federal employer’s identification number of each shareholder/partner. **Do not include dashes.**

Column 2 Partners Name - Enter the name of each shareholder/partner that the S Corporation or Partnership had during its taxable year.

Column 3 Type of Entity - Enter the entity type of each shareholder/partner that the S Corporation or Partnership had during its taxable year.

Column 4 Distributive Share % - Enter the income distribution percentage of each shareholder/partner carried out to the sixth decimal place.

Federal K-1 Information (on the provided EPT Spreadsheet Template)

Column E through Column Y - (Information from Part III section of each shareholder/partner’s Federal K-1).
Special Notes:

Column S Other income (loss) Include amount for any other income(loss) not previously reported.

Column T Description - Enter a brief description of any income(loss) or deductions included in Column S.

Column X Other Amount

Column Y Description - Enter a brief description of any amounts included in Column S.

Column Z Total Federal income/loss - (Column E through column S) minus (columns U through X).

Increasing Modifications (on the provided EPT Spreadsheet Template)

- Column AA** **Interest or dividend income on federal obligations which is exempt from federal tax but subject to state tax** - Enter the amount of US Government obligation interest or dividends not exempt from state tax, less related expenses not deducted on your federal return. Attach supporting documentation.
- Column AB** Interest or dividend income on state and local bonds other than bonds from West Virginia sources.
- Column AC** Interest on money borrowed to purchase bonds earning income exempt from WV tax.
- Column AD** Qualifying 402(e) lump-sum income NOT included in federal adjusted gross income but subject to state tax.
- Column AE** Other increasing adjustments.
- Column AF** Provide a brief description for Other increasing adjustments.
- Column AG** **Total Increasing Modifications** - Total columns AA to AE equals column AG. The total from column AG should match the amount on the "Summary tab, line 10".

Decreasing Modifications (on the provided EPT Spreadsheet Template)

- Column AH** Interest or dividends received on United States or West Virginia obligations, or allowance for government obligation income, included in federal adjusted gross income but exempt from state tax.
- Column AI** Refunds of state and local income taxes received and reported as income to the IRS.
- Column AJ** Qualified Opportunity Zone business income (Must include a copy of Federal IRS Form 8996).
- Column AK** Other decreasing adjustments.
- Column AL** Provide a brief description of Other decreasing adjustments.
- Column AM** Allowance for governmental obligations/obligations secured by residential property.
- Column AN** Total decreasing modifications including Allowance for governmental obligations/obligations secured by residential property - Total columns AH to AM equals column AN. The total from column AN should match the amount on the "Summary tab, line 16".
- Column AO** Modified Federal S Corporation/Partnership Income - Column Z + Column AG - Column AN
- Column AP** **WV TAX before credits** - Column AO multiplied by tax rate 0.0512. The total from Column AP should match "Summary tab, line 18".

TAX CREDITS (on the provided EPT Spreadsheet Template)

- Column AQ through BJ Tax credits** - Each tax credit has a schedule or form that is used to determine the amount of credit that can be claimed. Enter the amount that is applicable for each credit on the appropriate line. All tax credit schedules and forms can be located at tax.wv.gov website. Please note that some tax credit schedules require a completed application. The appropriate credit calculation schedule(s) or form(s) must be attached to your return in order to claim a tax credit.
- Column BK** **For resident partners, you may also indicate a credit for income tax paid to other states.** Your partner should claim this on their individual return using IT-140 Schedule E.
- Column BL** **Total Tax Credits** - Total of columns AQ through BH. The total from Column BI should match the amount on "Summary Tab, line 22," when it is added with Column BO on the Non-Resident Partner Report. **Note:** The amount of credit used cannot be greater than the Elective Passthrough Net Income Tax assessed on the return.
- Column BM** **TOTAL WV TAX DUE AFTER CREDITS** - Column AP minus Column BI (amount can not be less than zero).
- Column BN** **Income Credit** - Equals Column BJ; if the partner qualifies for the Income Credits ; if the partner is a C-Corp or Non-Profit entity, then the income credit amount in Column BK for that partner would be zero. This amount should be included on the partner's EK-1.

NONRESIDENT PARTNER REPORT

- Column 1** **Partners FEIN/SSN** - Enter either the social security number or federal employer's identification number of each shareholder/partner. **Do not include dashes.**
- Column 2** **Partners Name** - Enter the name of each shareholder/partner that the S Corporation or Partnership had during its taxable year.
- Column 3** **Type of Entity** - Enter the entity type of each shareholder/partner that the S Corporation or Partnership had during its taxable year.
- Column 4** **Distributive Share Percentage (%)** - Enter the income distribution percentage of each shareholder/partner carried out to the sixth decimal place.

Federal K-1 Information (on the provided EPT Spreadsheet Template)

Column E through Column Y - (Information from Part III section of each shareholder/partner's Federal K-1) Special Notes:

- Column S** **Other income (loss)** Include amount for any other income(loss) not previously reported.
- Column T** **Description** - Enter a brief description of any income(loss) included in Column S
- Column X** **Other Amount** - Include amount for any other deduction not previously reported.
- Column Y** **Description** - Enter a brief description of any amounts included in Column X
- Column Z** **Total Federal income/loss** - (Column E through column S) minus (columns U through column X).

Increasing Modifications (on the provided EPT Spreadsheet Template)

- Column AA** **Interest or dividend income on federal obligations which is exempt from federal tax but subject to state tax** - Enter the amount of US Government obligation interest or dividends not exempt from state tax, less related expenses not deducted on your federal return. Attach supporting documentation.
- Column AB** Interest or dividend income on state and local bonds other than from WV sources.
- Column AC** Interest on money borrowed to purchase bonds earning income exempt from WV tax.
- Column AD** Qualifying 402(e) lump-sum income NOT included in federal adjusted gross income but subject to state tax.
- Column AE** Other increasing adjustments.
- Column AF** Provide a brief description for Other increasing adjustments.
- Column AG** **Total Increasing Modifications** - Total columns AA to AE equals column AG. The total from column AG should match the amount on the "Summary tab, line 10".

Decreasing Modifications (on the provided EPT Spreadsheet Template)

- Column AH** Interest or dividends received on United States or West Virginia obligations, or allowance for government obligation income, included in federal adjusted gross income but exempt from state tax (on the provided EPT Spreadsheet Template).
- Column AI** Refunds of state and local income taxes received and reported as income to the IRS.
- Column AJ** Qualified Opportunity Zone business income (Must include copy of Federal IRS Form 8996).
- Column AK** Other decreasing adjustments.
- Column AL** Provide a brief description of Other decreasing adjustments.
- Column AM** Allowance for governmental obligations/obligations secured by residential property.
- Column AN** Total Decreasing Modifications including Allowance for governmental obligations/obligations secured by residential property - Total columns AH to AM equals column AN. The total from column AN should match the amount on the "Summary tab, line 16".
- Column AO** Modified Federal S Corporation/Partnership income - Column Z plus Column AG minus Column AN.

Allocation and Apportionment (on the provided EPT Spreadsheet Template)

- Column AP** **Total nonbusiness income from APT A1** - Total Non-Business Income Allocated for the Partner's Percentage of Distributive Share from line 9 on the APT SCHEDULE A1 EVERYWHERE on the Sch APT Tab.
- Column AQ** Total Income subject to Apportionment - Column AO minus Column AP.
- Column AR** **Apportionment Factor** - Found in Column 3 in the APT Schedule B Apportionment Factor section on the Sch APT Tab.
- Column AS** **West Virginia Apportioned Income** - Column AQ multiplied by Column AR.
- Column AT** **Non-Business Income Allocated to West Virginia from APT A2** - Total Non-Business Income Allocated for the Partner's Percentage of Distributive Share from line 9 the APT SCHEDULE A2 WEST VIRGINIA on the Sch APT Tab.
- Column AU** **WV Net Taxable Income** - Column AS plus Column AT. Column AU should match line 19 on the Summary Tab.
- Column AV** **WV TAX before credits** - Column AU multiplied by the tax rate 0.0512.
- TAX CREDITS (on the provided EPT Spreadsheet Template)
- Column AW through BPTax credits** - Each tax credit has a schedule or form that is used to determine the amount of credit that can be claimed. Enter the amount that is applicable for each credit on the appropriate line. All tax credit schedules and forms can be located at tax.wv.gov website. Please note that some tax credit schedules require a completed application. The appropriate credit calculation schedule(s) or form(s) must be attached to your return in order to claim a tax credit.
- Column BQ** **Total Tax Credits** - Total of columns AQ through BH. The total from Column BI should match the amount on "Summary Tab, line 22," when it is added with Column BO on the Non-Resident Partner Report. **Note:** The amount of credit used cannot be greater than the Elective Passthrough Net Income Tax assessed on the return.
- Column BR** **TOTAL WV TAX DUE AFTER CREDITS** - Column AP minus Column BI (amount can not be less than zero).
- Column BS** **Income Credit** - Equals Column BJ; if the partner qualifies for the Income Credits ; if the partner is a C-Corp or Non-Profit entity, then the income credit amount in Column BK for that partner would be zero. This amount should be included on the partner's EK-1.

SCHEDULE C

Column 1 Name of Entity – Enter the name of the entity making the payment or the name of the entity issuing the withholding credit.

Column 2 FEIN – Enter the FEIN of the entity making the payment or enter the FEIN of the entity issuing the withholding credit.

Column 3 Date of Payment – Enter the date of any payments made by the entity.

Column 4 Type – Enter a description of the type of payment made by, or on behalf of, the entity.

Column 5 Amount of Payment – Enter the amount of the payment made by, or on behalf of, the entity.

Schedule C Total – Sum of the total payments and/or Withholding Credits shown in Column 5. This amount must match the amount on the Elective Pass Through Entity tax return Summary Tab, line 27.

SCHEDULE D

If any boxes are checked in the REPORTABLE ENTITIES Section 4 of the Basic Information, then the names and FEINs of Reportable Entities must be entered on this schedule.

Column 1 Name of Entity – Enter the name of the reportable entity.

Column 2 FEIN – Enter the FEIN of the reportable entity. **Do not enter dashes.**

Column 3 Parent Name – Enter the name of the reportable entity's parent.

Column 4 Parent FEIN – Enter the FEIN of the parent. **Do not enter dashes.**

Column 5 Type of Entity – Enter the Alpha Character designation for the explanation of the relationship between the reportable entity and the entity submitting this West Virginia Return.

- A Pass through entity you are a partner, member, or shareholder doing business in WV
- B Entity you own 80% of voting stock
- C Entity that owned more than 80% of your stock
- D Disregarded entity or QSUB
- E Controlled Foreign Corporation

SCHEDULE TAX CREDITS

The Schedule of Tax Credits, is used to summarize the tax credits that are available to pass on to their shareholders/partners. These credits can be used against their net income tax liability from this entity. In addition to completing the Elective Pass Through Entity Schedule Tax Credits, each tax credit has a schedule or form that is used to determine the amount of credit that can be distributed. Please note that some tax credits require a completed application to be submitted and approved before Elect Pass Through Entity Schedule of Tax Credits can be filed. Both the Elective Pass Through Entity Schedule of Tax Credits must be completed and the appropriate credit calculation schedule(s) or form(s) must be attached to your return. Your shareholders/partners will need to submit the required documentation to claim their percentage of the available credits.

Line 21 is Credit for income tax paid to another state. To claim this, complete the tab "Sch ITP".

APT SCHEDULE A1 AND APT SCHEDULE A2

SCHEDULES A1 & A2: ALLOCATION OF NONBUSINESS INCOME FOR MULTISTATE BUSINESSES

If your business activities take place both inside and outside of West Virginia and you are also taxable in another state, certain items of nonbusiness income that are included in federal taxable income are directly allocated. All other income must be apportioned.

Business income arises from transactions and activities in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management or disposition of the property constitutes integral parts of the entity's trade or business.

Nonbusiness income includes all income that is not classified as business income, less all expenses attributable to the production of this income. Nonbusiness income is allocated to West Virginia if (1) the entity's commercial domicile, the principal place from which the trade or business is managed, is located in West Virginia, or (2) property creating the nonbusiness income is utilized in West Virginia. Nonbusiness income from real property is allocated if the property is

located in West Virginia. Nonbusiness income from tangible personal property is allocated to West Virginia if the property is utilized in West Virginia or the property was located in West Virginia at the time of its sale. Nonbusiness income from intangible personal property is allocated to West Virginia if the corporation's commercial domicile is located in West Virginia or, in the case of patents and copyrights, if they are used in West Virginia.

For a detailed discussion of allocation of nonbusiness income, you may request a copy of publication TSD-392, "Corporation Net Income Tax Nonbusiness Income" by contacting our Taxpayer Services Division (304)-558-3333 or online at www.tax.wv.gov.

Determine nonbusiness income allocated to West Virginia and outside West Virginia by completing the Elective Pass Through Entity tax return APT, Schedules A1, and A2. Only those types of nonbusiness income listed on the Elective Pass Through Entity tax return APT, Schedules A1, and A2 can be allocated. Any other type of income that the entity classifies as nonbusiness must be apportioned.

Schedule A1, Line 9 - The amount from the Elective Pass Through Entity tax return APT Schedule A1, column 3, line 9 should equal the sum of the Elective Pass Through Entity tax return, Nonresident Partner Report Tab, Column AP. This is not applicable if the your pass through entity is wholly WV.

Schedule A2, Line 9 - The amount from the Elective Pass Through Entity tax return APT Schedule A2, column 3, line 9 should equal the sum of the Elective Pass Through Entity tax return, Nonresident Partner Report Tab, Column AT. This is not applicable if the your pass through entity is wholly WV.

SCHEDULE APT SCHEDULE B APPORTIONMENT FACTOR

If your business activities take place both within and without West Virginia and you are also taxable in another state, all net income, after deducting those items of nonbusiness income allocated on the Elective Pass Through Entity tax return APT Schedules A1 and A2, must be apportioned to West Virginia by using the appropriate apportionment formula. **Completion of the Elective Pass Through Entity tax return APT Schedule B is required even if apportionment is zero. Apportionment defaults to 100% if your entity is wholly WV.**

Special apportionment formulas apply to motor carriers and to financial organizations. If you are filing for a motor carrier or financial organization, follow the apportionment instructions for the Elective Pass Through Entity tax return in the Apportionment Factor section.

MULTISTATE S CORPORATIONS/PARTNERSHIPS – APPORTIONMENT FORMULA

REGULAR ENTITIES- SALES FACTOR

To determine your West Virginia apportionment percentage, first, determine the following factors:

The term "sales" means all gross receipts of the taxpayer that are business income. Thus, the sales factor includes all gross receipts derived from transactions and activity in the regular course of your trade or business, less returns and allowances. Do not include interest or dividends from obligations of the United States government, which are exempt from taxation in West Virginia, or gross receipts from an activity that produced nonbusiness income that you allocated in the Elective Pass Through Entity tax return APT, Schedules A1, and A2.

Column 1 West Virginia: The numerator of the sales factor includes all gross receipts attributable to West Virginia and derived from transactions and activity in the regular course of your trade or business. All interest income, service charges, or time-price differential charges incidental to such gross receipts must be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

Column 2 Everywhere: The denominator of the sales factor includes all gross receipts derived from transactions and activity in the regular course of your trade or business that was reflected in your gross income reported and as appearing on your federal income tax return unless otherwise excluded. **Sales of tangible personal property delivered or shipped to a purchaser within a state in which you are not taxed (e.g. under Public Law 86-272) are no longer to be excluded from the denominator.**

Divide column 1 by column 2 and enter the result in column 3. State the result as a decimal fraction and round to six (6) places after the decimal. The six (6) digit decimal fraction from column 3 will then populate on the Summary Tab for Non resident.

MOTOR CARRIERS – SPECIAL SINGLE FACTOR FORMULA – VEHICLE MILES.

Motor carriers of property or passengers are subject to special apportionment rules. Motor carriers must apportion their business income by using a single factor formula of vehicle miles.

A motor carrier is any person engaged in the transportation of passengers and/or property for compensation by a motor propelled vehicle over roads in West Virginia, whether on a scheduled route or otherwise. The term “vehicle miles” means the operations of a motor carrier over one mile.

The special apportionment formula for motor carriers does NOT apply if:

- a. The motor carrier neither owns nor rents any real or tangible personal property located in West Virginia, has made no pickups or deliveries within West Virginia, and has traveled less than 50,000 miles in West Virginia during the taxable year; or
- b. The motor carrier neither owns nor rents any tangible personal property located in West Virginia except vehicles and makes no more than 12 trips into or through West Virginia during the taxable year.

Under either (A) or (B), the mileage traveled in West Virginia may not be more than five percent (.05) of the total vehicle miles traveled in all states during the taxable year.

Determine the apportionment factor by entering the appropriate vehicle miles for West Virginia in column 1, and vehicle miles everywhere in column 2.

Divide column 1 by column 2 and enter the result in column 3. State the result as a decimal fraction and round to six (6) places after the decimal. Enter the six (6) digit decimal fraction from column 3 on CIT-120, Schedule 2, line 7.

FINANCIAL ORGANIZATIONS – SPECIAL SINGLE FACTOR FORMULA – GROSS RECEIPTS.

Financial organizations subject to apportionment must apportion their business income by using a single factor gross receipts formula.

A financial organization is any holding company or regulated financial corporation or subsidiary thereof, or any corporation deriving more than fifty percent (.5) of its gross receipts from one or more of the following:

1. Making, acquiring, selling, or servicing loans or extensions of credit.
2. Leasing or acting as an agent, broker, or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit.
3. Operating a credit card business.
4. Rendering estate or trust services.
5. Receiving, maintaining, or otherwise handling deposits.
6. Engaging in any other activity with an economic effect comparable to any of the above.

Financial organizations regularly engaging in business in West Virginia shall apportion their business income by means of a single factor of gross receipts apportionment formula. A financial organization not having its commercial domicile in West Virginia is presumed to be regularly engaging in business in West Virginia if during any year it obtains or solicits business with 20 or more persons within West Virginia, or the sum of its gross receipts attributable to sources in West Virginia equals or exceeds \$100,000.00.

Gross receipts from the following ownership interest (and certain related activities) will not be considered in determining whether a financial organization is subject to taxation.

1. An interest in a real estate mortgage investment conduit, a real estate investment, or a regulated investment company;
2. An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates or interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;
3. An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan, and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner; or an interest in the right to service or collect income from such a loan or asset; or
4. An amount held in an escrow or trust account with respect to property described above.

However, if a financial organization is subject to taxation when gross receipts from these interests are not considered, such receipts must then be included when determining the amount of taxes owed.

Neither the numerator nor the denominator of the gross receipts factor should include gross receipts from obligations and certain loans on which you claim the special allowance on Form CIT-120, Schedule B-1.

Divide column 1 by column 2 and enter in column 3. State the result as a decimal fraction and round to six places after the decimal. Enter the six (6) digit decimal fraction from column 3 on Form CIT-120, Schedule 2, line 7.

SUMMARY - ENTITY LEVEL CALCULATIONS

CALCULATIONS OF WEST VIRGINIA INCOME AND TAX

Line 1 An S Corporation will enter the ordinary income (loss) as shown on Federal Form 1120S. A Partnership will enter the ordinary income (loss) as shown on Federal Form 1065.

Line 2 Enter the amount of all other gross income (loss) of the S Corporation as shown on Federal Form 1120S, Schedule K, that is not included on line 1. Enter the amount of all other gross income (loss) of the Partnership as shown on Federal Form 1065, Schedule K, that is not included on line 1.

Line 3 S Corporations will enter the amount of any expenses or deductions as shown on Federal Form 1120S, Schedule K, that are not included on line 1. Partnerships will enter the amount of any expenses or deductions as shown on Federal Form 1065, Schedule K, that are not included on line 1.

Line 4 Total Federal Income - Add lines 1 and 2 minus line 3

ADJUSTMENTS INCREASING

Line 5 Enter the amount of US Government obligation interest or dividends not exempt from state tax, less related expenses not deducted on your federal return. Attach supporting documentation.

Line 6 Interest or dividends on state and local bonds other than from WV sources.

Line 7 Interest on money borrowed to purchase bonds earning income exempt from WV tax.

Line 8 Qualifying 402(e) lump-sum income not included in federal adjusted gross income but subject to state tax.

Line 9 Submit a statement for any adjustment entered. Other increasing adjustments. Enter a brief description of any adjustment in the space provided.

Line 10 Total Increasing Adjustments - Add lines 5 through 9

ADJUSTMENTS DECREASING

Line 11 Interest or dividends on US or WV obligations included in Federal AGI but exempt from state tax.

Line 12 Refunds of state and local income taxes received and reported as income to the IRS.

Line 13 Qualified Opportunity Zone business income (Must include copy of Federal IRS Form 8996)

Line 14 Submit a statement for any adjustment entered. Other decreasing adjustments. Enter a brief description of any adjustment in the space provided.

Line 15 Allowance for Governmental Obligations/Obligations secured by residential property -

Line A - Enter the amount of federal obligations and securities.

Line B - Enter the amount of obligations of West Virginia and the political subdivision of West Virginia.

Line C - Enter investment or loans primarily secured by mortgages or deeds of trust on residential property located in West Virginia.

Line D - Enter loans primarily secured by a lien or security agreement on a mobile home or doublewide located in West Virginia.

Line E - Total - add lines 1 through 4

Line F - Enter total assets as shown on Schedule L, Federal Form 1120S or Federal Form 1065.

Line G - Enter the amount of line 5 divided by line 6 and round to six decimal places.

Line H - Enter the sum of line 4 and line 10 and subtract the sum of lines 11 through 14.

Line I - Enter the amount of line G multiplied by line H.

Line 16 Total Decreasing Adjustments - Add lines 11 through 14 plus line 15-I.

MODIFIED INCOME CALCULATION

Line 17 Modified Federal S Corporation/Partnership Income Add Line 4 and Line 10 subtract Line 16

Line 18 Resident WV Net Taxable Income - Autopopulated from Resident Partner's Report

Line 19 Nonresident WV Net Taxable Income - Autopopulated from Nonresident Partner's Report

Line 20 Total WV Net Taxable Income - Add lines 18 and 19 together.

Line 21 Total West Virginia Income Tax Due - Multiply line 20 by tax rate of 5.12 percent (.0512)

Line 22 Tax Credits - Autopopulated from Tax Credits Tab

LINE 23 Total WV Income Tax due Subtract line 22 from line 20

PAYMENT SECTION

Line 24 Prior Year Carryforward Credit - Enter the credit carried forward from the prior tax year here.

Line 25 Estimated and extension payments - Enter estimated and extension payments made towards the income tax due. If this is an amended return enter any amount paid with the original return here.

Line 26 Withholding Credits - Enter the amount of withholding credit from any WVK-1, NRW-2 or 1099 submitted with your return.

Line 27 Payments - Add lines 24 through 26 together.

Line 28 Overpayment previously refunded or credited (amended return only)

Line 29 Total Payments - Subtract line 28 from line 27.

Line 30 Tax Due - If line 29 is smaller than line 23, enter the amount owed. If line 29 is larger than line 23 skip to line 31

Line 31 Overpayment - Enter the amount of line 29 minus line 23.

Line 32 Credit Carryforward - Enter the amount of line 31 to be credited to next year's tax.

Line 33 Refund - Enter the amount of line 31 to be refunded (line 31 minus line 32).

PETITIONING FOR AN ALTERNATIVE METHOD OF APPORTIONMENT

To use an alternate method of allocation and apportionment, you must petition the Tax Commissioner to use some other basis to determine your taxable net income. Your petition for an alternate method must be filed by no later than the **normal due date of your return**.

You must receive written permission to use an alternate apportionment method before filing your return. Permission will only be granted if you can show that the statutory formula does not properly reflect your taxable income, and if the alternate method properly and fairly shows your West Virginia taxable income.

Your petition should include your name and address; state of incorporation, and principal place of business; description of the kind(s) of business in which you are engaged; a detailed statement of how sales are made in West Virginia; computation of your West Virginia taxable income using the statutory apportionment formula and using your proposed alternate formula; and a summary of the facts that support your position.

Send your petition to:

West Virginia Tax Division
Tax Account Administration
Corporate Tax Unit
P.O. Box 1202
Charleston, WV 25324-1202

INSTRUCTIONS**GENERAL**

The partners, members, or shareholders (hereafter partner) of any Elective Pass Through Entity are liable for tax on their share of the income, whether or not distributed, and must include their share on the individual income tax return.

West Virginia Schedule EK-1 provides a reporting mechanism for a Pass Through Entity to report the distributive share of income, tax paid, and credits generated for partners.

Additionally, it is the reporting mechanism for any income credit generated when the entity pays tax on behalf of the partner.

This form should be used for any partner that is not a "C" Corporation. The income credit may not be granted to a "c" Corporation or Non-Profit.

"FROM PARTNER REPORT" CHECKED - INFORMATION ONLY EK-1

When the entity listed in "Organization Name" submits the EK-1 for information purposes, the entity must check the "From Partner Report" box and include the "PARTNER/SHAREHOLDER/MEMBER/BENEFICIARY" on either the resident or nonresident partner report.

The Organization section includes information concerning the entity reporting the information (including the name, address, identification number, and type), information concerning the partner to which this information statement relates (including the name, address, and identification number), and a withholding statement.

INCOME AND TAX PAID

Line 1 – This section should include the distributive share of income for a partner.

Line 2 – This section should include the amount of West Virginia tax paid on behalf of the partner.

DISTRIBUTIVE INCOME PERCENTAGE - Enter the distributive income percentage as a decimal rounded to 6 decimal places. For example, 100% partnership should be written as 1.000000.

CREDITS ALLOCABLE TO PARTNER/SHAREHOLDER/MEMBER

This section reflects the distributive share of tax credits available to the partner reported on the entity's Elective Pass Through Entity Tax Return Schedule TC.

Report by partners – The WV Schedule EK-1 should be provided to all partners that are not "C" Corporations or Non-profits. All such partners must file a WV tax return that includes all WV Schedule EK-1s provided to the partner. Include your share of the partnership's income or (loss), credits, deductions, etc., as shown by your Schedule EK-1 on your West Virginia income tax return for the year in which the tax year of the entity ends.

SPECIAL RULE FOR PASS THROUGH ENTITIES:

Pass through entity partners of pass through entities should allocate income received from a Pass Through Entity unless such entities are engaged in a unitary business. If a unitary relationship exists, a Pass Through Entity partner of a pass through entity may reapportion its WV income, including the appropriate factors of the subsidiary.