



MULTISTATE INCOME/FRANCHISE TAX

## West Virginia adopts single factor sales and market sourcing apportionment

### Tax Alert

## Overview

On April 9, 2021, West Virginia Governor Jim Justice signed into law [House Bill 2026](#) (H.B. 2026), which moves the state to a single sales factor apportionment regime with market-based sourcing for sales other than sales of tangible personal property. The single sales factor apportionment is effective for tax years beginning on or after January 1, 2022. The market-based sourcing methodology is effective for sales made on or after January 1, 2022. The bill includes the following modifications to West Virginia law:

Apportionment Changes (W. Va. Code § 11-24-7):

- Changes the West Virginia apportionment factor from a three-factor apportionment formula to a single sales factor formula;
- Eliminates the “throw out” rule related to sales of tangible personal property for sales factor apportionment calculation purposes; and
- Introduces market-based sourcing for sales of services and intangible property.

Remote Worker Protections (W. Va. Code § 11-21-31):

- Excludes compensation of certain remote employees from state taxation and withholding.

## Apportionment Changes

Prior to the passage of H.B. 2026, the West Virginia apportionment factor consisted of a property factor, a payroll factor, and a double-weighted sales factor. H.B. 2026 changes the apportionment formula for most corporate income taxpayers to a single sales factor formula, for tax years beginning on or after January 1, 2022.<sup>1</sup> Additionally, for sales made on or after January 1, 2022, the section of West Virginia law requiring “throw out” of sales for West Virginia taxpayers is no longer applicable.<sup>2</sup> Specifically, sales of tangible personal property shipped from a location in West Virginia to a purchaser in a state

where the taxpayer is not subject to tax is no longer required to be “thrown out” or excluded from the West Virginia sales factor denominator.

H.B. 2026 also replaces the cost of performance / income-producing activity methodology for sourcing sales of services and intangible property made on or after January 1, 2022 with the Multistate Tax Commission’s (“MTC”) market-based sourcing model.<sup>3</sup> However, unlike the MTC standard language, West Virginia’s new bill does not include a “throw out” provision for sales of services and only has a limited throw out rule for certain sales of intangible property.

## Remote Worker Protections

Effective January 1, 2022, certain non-resident individual taxpayers who work in West Virginia for less than 30 days during the calendar year will be exempt from West Virginia income tax and related wage withholding, subject to certain conditions, including the requirement that the non-resident individual’s state of residence provides a substantially similar exclusion or does not impose an individual income tax.<sup>4</sup>

## Taxpayer Considerations

Multistate taxpayers should consider the impact of the legislation’s significant apportionment changes as well as to employee withholding under the new remote workforce guidelines.

## Get in touch

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## Footnotes

<sup>1</sup> H.B. 2026 Sec. 11-24-7 (e).

<sup>2</sup> H.B. 2026 Sec. 11-24-7 (e)(11)(C).

<sup>3</sup> H.B. 2026 Sec. 11-24-7 (e)(13).

<sup>4</sup> H.B. 2026 Sec. 11-21-31.

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