

No. 481

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

SENATE BILL NO. 481

*(Originating in the Committee
on Ways and Means)*



PASSED April 4, 1989

In Effect from Passage

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SECRETARY OF STATE

ENROLLED

Senate Bill No. 481

(ORIGINATING IN THE COMMITTEE ON WAYS AND MEANS.)

[Passed April 4, 1989; in effect from passage.]

AN ACT to amend article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to the corporation net income tax; providing special rules for motor carriers to apportion their business income; permitting tax commissioner to specify other special formula or formulae; and providing effective date.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a, to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-7a. Special apportionment rules.

1 (a) *General.* — The Legislature hereby finds that the
2 general formula set forth in section seven of this
3 article for apportioning the business income of
4 corporations taxable in this as well as in another state
5 is inappropriate for use by certain businesses due to
6 the particular characteristics of those businesses or the

7 manner in which such businesses are conducted.
8 Accordingly, the general formula set forth in section
9 seven of this article may not be used to apportion
10 business income when a specific formula established
11 under this section applies to the business of the
12 taxpayer. The Legislature further finds that the tax
13 commissioner has the authority under chapter eleven
14 of this code to promulgate by legislative regulations
15 special formula or formulae by which a specified
16 classification of taxpayers is required to apportion its
17 business income. Accordingly, this section shall not be
18 construed as prohibiting the tax commissioner from
19 exercising his authority to promulgate legislative
20 regulations which set forth such other special formula
21 or formulae and in that regulation requiring a
22 specified classification of taxpayers to apportion their
23 business income as provided in that special formula,
24 instead of apportioning their business income
25 employing the general formula set forth in section
26 seven of this article, when he believes that such
27 formula or formulae will more fairly and more
28 reasonably allocate and apportion to this state the
29 adjusted federal taxable income of the taxpayer.
30 Additionally, nothing in this section shall prevent the
31 tax commissioner from requiring the use, or the
32 taxpayer from petitioning to use, as the case may be,
33 some other method of allocation or apportionment as
34 provided in subsection (h), section seven of this article.
35 Permission granted to a taxpayer under subsection (h),
36 section seven of this article to use another method of
37 allocation or apportionment shall be valid for a period
38 of five consecutive taxable years, beginning with the
39 taxable year for which such authorization is granted,
40 provided there is no material change of fact or law
41 which materially affects the fairness and
42 reasonableness of the result reached under such other
43 method of allocation or apportionment. Upon expira-
44 tion of any such authorization the taxpayer may again
45 petition under section seven of this article to use
46 another method of apportionment. A material change
47 of fact or law which materially affects the fairness and
48 reasonableness of the result reached under such other

49 method of allocation or apportionment automatically
50 revokes authorization to use that other method begin-
51 ning with the taxable year in which the material
52 change of fact occurred or the taxable year for which
53 a material change in law first takes effect, whichever
54 occurs first.

55 (b) *Motor carriers.* — Motor carriers of property or
56 passengers shall apportion the business income compo-
57 nent of their adjusted federal taxable income to this
58 state by the use of the ratio which their total vehicle
59 miles in this state during the taxable year bears to
60 total vehicle miles of the corporation everywhere
61 during the taxable year, except as otherwise provided
62 in this subsection.

63 (1) *Definitions.* — For purposes of this subsection (b):

64 (A) “Motor carrier” means any person engaging in
65 the transportation of passengers or property or both,
66 for compensation by motor propelled vehicle over
67 roads in this state, whether traveling on a scheduled
68 route or otherwise.

69 (B) “Vehicle mile” means the operation of a motor
70 carrier over a distance of one mile, whether owned or
71 operated by a corporation.

72 (2) The provisions of this subsection (b) shall not
73 apply to a motor carrier:

74 (A) Which neither owns nor rents real or tangible
75 personal property located in this state, which has
76 made no pick-ups or deliveries within this state, and
77 which has traveled less than fifty thousand vehicle
78 miles in this state during the taxable year; or

79 (B) Which neither owns nor rents any real or
80 tangible personal property located in this state, except
81 vehicles, and which makes no more than twelve trips
82 into or through this state during a taxable year.

83 The mileage traveled under fifty thousand miles or
84 the mileage traveled in this state during the twelve
85 trips into or through this state may not represent
86 more than five percent of the total motor vehicle miles

87 traveled in all states during the taxable year.

88 (c) The manner in which the taxpayer is required or
89 permitted to apportion its business income under this
90 article does not control or otherwise affect how that
91 taxpayer apportions its capital for purposes of the
92 business franchise tax imposed by article twenty-three
93 of this chapter.

94 (d) *Effective date.* — The provisions of this section
95 shall apply to all taxable years beginning on or after
96 the first day of January, one thousand nine hundred
97 eighty-nine, and to all years that begin prior to that
98 date which are still open to audit and assessment.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Judd C. Nichols
.....
Clerk of the Senate

Donald L. Hoop
.....
Clerk of the House of Delegates

John S. Tucker
.....
President of the Senate

Robert C. Chubb
.....
Speaker House of Delegates

The within *is approved* this the *12th* day of *April* 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/7/89

Time 5:15