

SB 2002

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Second Extraordinary Session, 2006

ENROLLED

Senate Bill No. 2002

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed November 14, 2006; in effect ninety days from passage.]

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AN ACT to amend and reenact §11-24-6 of the Code of West Virginia, 1931, as amended, relating to the elimination of the corporation net income tax adjustment for pre-1967 gains on the sale of property.

Be it enacted by the Legislature of West Virginia:

That §11-24-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-6. Adjustments in determining West Virginia taxable income.**

1 (a) *General.* — In determining West Virginia taxable
2 income of a corporation, its taxable income as defined
3 for federal income tax purposes shall be adjusted and
4 determined before the apportionment provided by
5 section seven of this article, by the items specified in
6 this section.

7 (b) *Adjustments increasing federal taxable income.* —
8 There shall be added to federal taxable income, unless
9 already included in the computation of federal taxable
10 income, the following items:

11 (1) Interest or dividends on obligations or securities of
12 any state or of a political subdivision or authority of the
13 state;

14 (2) Interest or dividends, less related expenses to the
15 extent not deducted in determining federal taxable
16 income, on obligations or securities of any authority,
17 commission or instrumentality of the United States
18 which the laws of the United States exempt from
19 federal income tax but not from state income taxes;

20 (3) Income taxes and other taxes, including franchise
21 and excise taxes, which are based on, measured by, or
22 computed with reference to net income, imposed by this
23 state or any other taxing jurisdiction, to the extent
24 deducted in determining federal taxable income;

25 (4) The amount of unrelated business taxable income
26 as defined by Section 512 of the Internal Revenue Code
27 of 1986, as amended, of a corporation which by reason
28 of its purposes is generally exempt from federal income
29 taxes;

30 (5) The amount of any net operating loss deduction
31 taken for federal income tax purposes under Section
32 172 of the Internal Revenue Code of 1986, as amended;

33 (6) Any amount included in federal taxable income
34 which is a net operating loss from sources without the
35 United States after making the decreasing adjustments
36 provided in subdivisions (5) and (7), subsection (c) of
37 this section for Section 951 income and Section 78
38 income. Federal taxable income from sources without
39 the United States shall be determined in accordance
40 with the provisions of Sections 861, 862 and 863 of the
41 Internal Revenue Code of 1986, as amended; and

42 (7) The amount of foreign taxes deducted in
43 determining federal taxable income.

44 (c) *Adjustments decreasing federal taxable income.* —
45 There shall be subtracted from federal taxable income
46 to the extent included therein:

47 (1) Any gain from the sale or other disposition of
48 property having a higher fair market value on the first
49 day of July, one thousand nine hundred sixty-seven,
50 than the adjusted basis at said date for federal income
51 tax purposes: *Provided*, That the amount of this
52 adjustment is limited to that portion of any gain which
53 does not exceed the difference between the fair market
54 value and the adjusted basis: *Provided, however*, That
55 for tax years beginning after the thirty-first day of
56 December, two thousand eight, no amount of gain from
57 the sale or other disposition of property having a higher
58 fair market value on the first day of July, one thousand
59 nine hundred sixty-seven, than the adjusted basis at
60 said date for federal income tax purposes may be
61 subtracted from federal taxable income to the extent
62 included therein;

63 (2) The amount of any refund or credit for
64 overpayment of income taxes and other taxes, including
65 franchise and excise taxes, which are based on,
66 measured by, or computed with reference to net income,
67 imposed by this state or any other taxing jurisdiction,
68 to the extent properly included in gross income for
69 federal income tax purposes;

70 (3) The amount added to federal taxable income due
71 to the elimination of the reserve method for
72 computation of the bad debt deduction;

73 (4) The full amount of interest expense actually
74 disallowed in determining federal taxable income
75 which was incurred or continued to purchase or carry
76 obligations or securities of any state or of any political
77 subdivision of the state;

78 (5) The amount required to be added to federal
79 taxable income as a dividend received from a foreign
80 (non-United States) corporation under Section 78 of the
81 Internal Revenue Code of 1986, as amended, by a
82 corporation electing to take the foreign tax credit for
83 federal income tax purposes;

84 (6) The amount of salary expenses disallowed as a
85 deduction for federal income tax purposes due to
86 claiming the federal jobs credit under Section 51 of the
87 Internal Revenue Code of 1986, as amended;

88 (7) The amount included in federal adjusted gross
89 income by the operation of Section 951 of the Internal
90 Revenue Code of 1986, as amended;

91 (8) Employer contributions to medical savings
92 accounts established pursuant to section fifteen, article
93 sixteen, chapter thirty-three of this code to the extent
94 included in federal adjusted gross income for federal
95 income tax purposes less any portion of employer

96 contributions withdrawn for purposes other than
97 payment of medical expenses: *Provided*, That the
98 amount subtracted pursuant to this subsection for any
99 one taxable year may not exceed the maximum amount
100 that would have been deductible from the corporation's
101 federal adjusted gross income for federal income tax
102 purposes if the aggregate amount of the corporation's
103 contributions to individual medical savings accounts
104 established under section fifteen, article sixteen,
105 chapter thirty-three of this code had been contributed
106 to a qualified plan as defined under the Employee
107 Retirement Income Security Act of 1974, as amended;
108 and

109 (9) Any amount included in federal taxable income
110 which is foreign source income. Foreign source income
111 is any amount included in federal taxable income which
112 is taxable income from sources without the United
113 States, less the adjustments provided in subdivisions (5)
114 and (7) of this subsection.

115 In determining "foreign source income", the
116 provisions of Sections 861, 862 and 863 of the Internal
117 Revenue Code of 1986, as amended, shall be applied.

118 (d) *Net operating loss deduction.* — Except as
119 otherwise provided in this subsection, there is allowed
120 as a deduction for the taxable year an amount equal to
121 the aggregate of: (1) The West Virginia net operating
122 loss carryovers to that year; plus (2) the net operating
123 loss carrybacks to that year: *Provided*, That no more
124 than three hundred thousand dollars of net operating
125 loss from any taxable year beginning after the thirty-
126 first day of December, one thousand nine hundred
127 ninety-two, may be carried back to any previous
128 taxable year. For purposes of this subsection, the term
129 "West Virginia net operating loss deduction" means the
130 deduction allowed by this subsection, determined in

131 accordance with Section 172 of the Internal Revenue
132 Code of 1986, as amended.

133 (1) *Special rules.* —

134 (A) When the corporation further adjusts its adjusted
135 federal taxable income under section seven of this
136 article, the West Virginia net operating loss deduction
137 allowed by this subsection shall be deducted after the
138 section seven adjustments are made;

139 (B) The Tax Commissioner shall prescribe the
140 transition regulations as he or she deems necessary for
141 fair and equitable administration of this subsection as
142 amended by this act.

143 (2) *Effective date.* — The provisions of this subsection,
144 as amended by chapter one hundred nineteen, Acts of
145 the Legislature, one thousand nine hundred eighty-
146 eight, apply to all taxable years ending after the
147 thirtieth day of June, one thousand nine hundred
148 eighty-eight; and to all loss carryovers from taxable
149 years ending on or before said thirtieth day of June.

150 (e) *Special adjustments for expenditures for water and*
151 *air pollution control facilities.* —

152 (1) If the taxpayer so elects under subdivision (2) of
153 this subsection, there shall be:

154 (A) Subtracted from federal taxable income the total
155 of the amounts paid or incurred during the taxable year
156 for the acquisition, construction or development within
157 this state of water pollution control facilities or air
158 pollution control facilities as defined in Section 169 of
159 the Internal Revenue Code of 1986, as amended; and

160 (B) Added to federal taxable income the total of the
161 amounts of any allowances for depreciation and

162 amortization of the water pollution control facilities or
163 air pollution control facilities, as so defined, to the
164 extent deductible in determining federal taxable
165 income.

166 (2) The election referred to in subdivision (1) of this
167 subsection shall be made in the return filed within the
168 time prescribed by law, including extensions of the
169 time, for the taxable year in which the amounts were
170 paid or incurred. The election shall be made in that
171 manner, and the scope of application of that election
172 shall be defined, as the Tax Commissioner may by rule
173 prescribe, and shall be irrevocable when made as to all
174 amounts paid or incurred for any particular water
175 pollution control facility or air pollution control
176 facility.

177 (3) Notwithstanding any other provisions of this
178 subsection or of section seven of this article to the
179 contrary, if the taxpayer's federal taxable income is
180 subject to allocation and apportionment under said
181 section, the adjustments prescribed in paragraphs (A)
182 and (B), subdivision (1) of this subsection shall, instead
183 of being made to the taxpayer's federal taxable income
184 before allocation and apportionment thereof as
185 provided in section seven of this article, be made to the
186 portion of the taxpayer's net income, computed without
187 regard to the adjustments, allocated and apportioned to
188 this state in accordance with said section.

189 (f) *Allowance for certain government obligations and*
190 *obligations secured by residential property.* — The West
191 Virginia taxable income of a taxpayer subject to this
192 article as adjusted in accordance with subsections (b),
193 (c) and (e) of this section shall be further adjusted by
194 multiplying the taxable income after the adjustment by
195 said subsections by a fraction equal to one minus a
196 fraction:

197 (1) The numerator of which is the sum of the average
198 of the monthly beginning and ending account balances
199 during the taxable year (account balances to be
200 determined at cost in the same manner that obligations,
201 investments and loans are reported on Schedule L of
202 the Federal Form 1120) of the following:

203 (A) Obligations or securities of the United States, or
204 of any agency, authority, commission or instrumentality
205 of the United States and any other corporation or entity
206 created under the authority of the United States
207 Congress for the purpose of implementing or furthering
208 an objective of national policy;

209 (B) Obligations or securities of this state and any
210 political subdivision or authority of the state;

211 (C) Investments or loans primarily secured by
212 mortgages, or deeds of trust, on residential property
213 located in this state and occupied by nontransients; and

214 (D) Loans primarily secured by a lien or security
215 agreement on residential property in the form of a
216 mobile home, modular home or double-wide located in
217 this state and occupied by nontransients.

218 (2) The denominator of which is the average of the
219 monthly beginning and ending account balances of the
220 total assets of the taxpayer which are shown on
221 Schedule L of Federal Form 1120, which are filed by
222 the taxpayer with the Internal Revenue Service.

223 (g) The amendments to the provisions of this section
224 made during the regular session of the Legislature in
225 the year one thousand nine hundred ninety-eight apply
226 to all taxable years beginning on or after the thirty-first
227 day of December, one thousand nine hundred ninety-
228 seven.

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

Randy White
.....
Chairman Senate Committee

R. Beer
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell E. Gales
.....
Clerk of the Senate

Bugoy N. Banzon
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

Robert L. Williams
.....
Speaker House of Delegates

The within *is approved* this
the *30th* Day of *November*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

NOV 29 2006

Time 10:30 am