WEST VIRGINIA CODE: §11-21-12K

§11-21-12k. Additional modification reducing federal adjusted gross income for shareholders of S corporations and members of limited liability companies engaged in banking business.

(a) For taxable years beginning on and after January 1, 2018, the West Virginia adjusted gross income of a taxpayer who is a shareholder of an S corporation, or member of a limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code, as adjusted pursuant to §11-21-12 of this code, shall be further adjusted by multiplying that portion of the taxpayer's West Virginia adjusted gross income attributable to the taxpayer's proportional share of all items of income, loss, deduction or credit of the S corporation, or limited liability company, as shown on the K-1 received by the taxpayer for the tax year, by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances of the S corporation, or limited liability company, during the taxable year (account balances to be determined at cost in the same manner that obligations, investments and loans are reported on Schedule L of Federal Form 1120S, or Schedule L of Form 1065) of the following:

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

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

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

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

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the S corporation, or limited liability company, which are shown on Schedule L of Federal Form 1120S, which is filed by the S corporation, or on Schedule L of Federal Form 1065, which is filed by the limited liability company, with the Internal Revenue Service: Provided, That the adjustment allowed herein shall not be made to the extent that the adjustments provided for in this section are otherwise allowed by §11-21-12 of this code and shall not be made to adjusted gross income of a taxpayer who is a shareholder of an S corporation, or a member of a limited liability company, engaged in

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banking business if the income of the S corporation, or limited liability company, of which the taxpayer is a shareholder, or member, has been adjusted at the S corporation, or limited liability company, level for the tax year.

(b) Apportionment rules for organizations engaged in business both within and without this state. — For taxable years beginning on and after January 1, 2018, an S corporation, or a limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code, which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in subsection (a) of this section, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (c) of this section.

(c) Special gross receipts factor. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the S corporation, or limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code from sources within this state during the taxable year and the denominator of which is the total gross receipts of the S corporation, or limited liability company, engaged in business as a financial organization as defined in §11-24-3a(a)(14) of this code wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in subsection(a) of this section.

(d) Effective date. — The provisions of this section are retroactive with respect to tax years beginning on or after January 1, 2018, the law in effect for each of those years is fully preserved as to those years, except as provided in this section.

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