WEST VIRGINIA CODE: §11-24-6

§11-24-6. Adjustments in determining West Virginia taxable income.

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

(b) Adjustments increasing federal taxable income. -- There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items:

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

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

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

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

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

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

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

(c) Adjustments decreasing federal taxable income. -- There shall be subtracted from federal taxable income to the extent included therein:

(1) Any gain from the sale or other disposition of property having a higher fair market value

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on July 1, 1967, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any gain which does not exceed the difference between the fair market value and the adjusted basis: Provided, however, That for tax years beginning after December 31, 2008, no amount of gain from the sale or other disposition of property having a higher fair market value on July 1, 1967, than the adjusted basis at said date for federal income tax purposes may be subtracted from federal taxable income to the extent included therein;

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

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

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

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

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

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

(8) Employer contributions to medical savings accounts established pursuant to section fifteen, article sixteen, chapter thirty-three of this code to the extent included in federal adjusted gross income for federal income tax purposes less any portion of employer contributions withdrawn for purposes other than payment of medical expenses: Provided, That the amount subtracted pursuant to this subsection for any one taxable year may not exceed the maximum amount that would have been deductible from the corporation's federal adjusted gross income for federal income tax purposes if the aggregate amount of the corporation's contributions to individual medical savings accounts established under section fifteen, article sixteen, chapter thirty-three of this code had been contributed to a qualified plan as defined under the Employee Retirement Income Security Act of 1974, as amended; and

(9) Any amount included in federal taxable income which is foreign source income. Foreign

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source income is any amount included in federal taxable income which is taxable income from sources without the United States, less the adjustments provided in subdivisions (5) and (7) of this subsection.

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

(d) Net operating loss deduction. -- Except as otherwise provided in this subsection, there is allowed as a deduction for the taxable year an amount equal to the aggregate of: (1) The West Virginia net operating loss carryovers to that year; plus (2) the net operating loss carrybacks to that year: Provided, That no more than $300,000 of net operating loss from any taxable year beginning after December 31, 1992, may be carried back to any previous taxable year. For purposes of this subsection, the term "West Virginia net operating loss deduction" means the deduction allowed by this subsection, determined in accordance with Section 172 of the Internal Revenue Code of 1986, as amended.

(1) Special rules. --

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

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

(2) Effective date. -- The provisions of this subsection, as amended by chapter one hundred nineteen, Acts of the Legislature, 1988, apply to all taxable years ending after June 30, 1988; and to all loss carryovers from taxable years ending on or before said June 30.

(e) Special adjustments for expenditures for water and air pollution control facilities. --

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

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

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of the water pollution control facilities or air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law, including extensions of the time, for the taxable year in which the amounts were paid or incurred. The election shall be made in that manner, and the scope of application of that election shall be defined, as the Tax Commissioner may by

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rule prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

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

(f) Allowance for certain government obligations and obligations secured by residential property. -- The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with subsections (b), (c) and (e) of this section shall be further adjusted by multiplying the taxable income after the adjustment by said subsections 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 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 the Federal Form 1120) 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 taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.

(g) The amendments to the provisions of this section made during the 1998 regular session of the Legislature apply to all taxable years beginning on or after December 31, 1997.

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