WEST VIRGINIA CODE: §11-24-6C

§11-24-6c. Additional modification decreasing federal taxable income; net liability under apportionment.

In addition to the adjustments to federal taxable income under section six of this article, the amounts under this section are subtracted from the federal taxable income of a corporation determined before the apportionment provided by section seven of this article in determining West Virginia taxable income.

(a) For purposes of this section, "net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of the taxpayer, as computed in accordance with generally accepted accounting principles, and "net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the taxpayer, as computed in accordance with generally accepted accounting principles.

(b) Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company’s financial statements prepared in accordance with generally accepted accounting principles, as of the effective date of this section, shall be eligible for this subtraction.

(c) If the application of (1) The Proviso contained in subsection (e) of section seven of this article; (2) Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and (3) Subdivision (13) of subsection (e) of section seven of this article results in an aggregate increase to the taxpayer’s net deferred tax liability or an aggregate decrease to the taxpayer’s net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the taxpayer shall be entitled to a subtraction, as determined in this section.

(d) For the 10-year period beginning with the taxpayer’s taxable year that begins on or after January 1, 2033, a taxpayer shall be entitled to a subtraction in computing West Virginia taxable income equal to one tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or the aggregate net change thereof, from a net deferred tax asset to a net deferred tax liability, as described in subsection (c) of this section, as computed in accordance with generally accepted accounting principles, that resulted from the application of (1) The Proviso contained in subsection (e) of section seven of this article; (2) Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and (3) Subdivision (13) of subsection (e) of section seven of this article, but for the subtraction provided under this section.

(e) The subtraction calculated under this section shall not be reduced as a result of any events subsequent to such calculation including, but not limited to, any disposition or abandonment of assets. Such subtraction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the subtraction under this section is

WV Legislature

greater than taxpayer's federal taxable income as adjusted by section six of this article, any excess subtraction shall be carried forward and applied as a subtraction to taxpayer's federal taxable income in determining taxpayer's West Virginia taxable income in future tax years until fully utilized.

(f) Any taxpayer intending to claim a subtraction under this section shall file a statement with the Tax Commissioner on or before July 1, 2024, specifying the total amount of the subtraction which the taxpayer claims. The statement shall be made on such form and in such manner as prescribed by the commissioner and shall contain such information or calculations as the commissioner may specify. No subtraction shall be allowed under this section for any taxable year except to the extent claimed in accordance with this subsection, in the manner prescribed by the commissioner. Nothing in this subsection shall limit the authority of the commissioner to review or re-determine the proper amount of any subtraction claimed, whether on the statement required under this subsection or on a tax return for any taxable year.

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