

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972



ENROLLED

HOUSE BILL No. 1214

*Originating in the House*  
(By Mr. Committee on Finance)



PASSED March 11 1972

In Effect 90 days from Passage

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 3-29-72

1214

**ENROLLED**

**House Bill No. 1214**

(Originating in the House Committee on Finance)

[Passed March 11, 1972; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, five and six, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article by adding thereto a new section, designated section thirteen-a, all relating to meaning of terms, capital gain treatment for corporation income tax purposes, filing of information returns by corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended, and penalties for nonfiling of such information returns.

*Be it enacted by the Legislature of West Virginia:*

That sections three, five and six, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section thirteen-a, all to read as follows:

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-3. Meaning of terms.**

- 1 (a) *General.*—Any term used in this article shall have
- 2 the same meaning as when used in a comparable context
- 3 in the laws of the United States relating to federal in-
- 4 come taxes, unless a different meaning is clearly required

5 by the context or by definition in this article. Any ref-  
6 erence in this article to the laws of the United States or  
7 to the Internal Revenue Code or to the federal income  
8 tax law shall mean the provisions of the laws of the  
9 United States as relate to the determination of income for  
10 federal income tax purposes. All amendments made to  
11 the laws of the United States prior to the first day of Jan-  
12 uary, one thousand nine hundred seventy-two, shall be  
13 given effect in determining the taxes imposed by this  
14 article for the tax period beginning the first day of July,  
15 one thousand nine hundred seventy-two, and thereafter,  
16 but no amendment to laws of the United States made on  
17 or after the first day of January, one thousand nine hun-  
18 dred seventy-two, shall be given effect.

19 (b) *Certain terms defined.*—For purposes of this ar-  
20 ticle:

21 (1) The term “tax commissioner” means the tax  
22 commissioner of the state of West Virginia or his dele-  
23 gate.

24 (2) The term “corporation” means and includes  
25 a joint-stock company or any association which is taxable  
26 as a corporation under the federal income tax law.

27 (3) The term “domestic corporation” means any  
28 corporation organized under the laws of West Virginia.

29 (4) The term “foreign corporation” means any  
30 corporation other than a domestic corporation.

31 (5) The term “state” means any state of the  
32 United States, the District of Columbia, the Common-  
33 wealth of Puerto Rico, any territory or possession of the  
34 United States and any foreign country or political sub-  
35 division thereof.

36 (6) The term “taxable year” means the taxable  
37 year for which the taxable income of the taxpayer is  
38 computed under the federal income tax law.

39 (7) The term “taxpayer” means a corporation  
40 subject to the tax imposed by this article.

41 (8) The term “tax” includes, within its meaning,  
42 interest and penalties unless the intention to give it a  
43 more limited meaning is disclosed by the context.

44           (9) The term "commercial domicile" means the  
45 principle place from which the trade or business of the  
46 taxpayer is directed or managed.

47           (10) The term "compensation" means wages, sal-  
48 aries, commissions and any form of remuneration paid to  
49 employees for personal services.

50           (11) The term "West Virginia taxable income"  
51 means the taxable income of a corporation as defined by  
52 the laws of the United States for federal income tax  
53 purposes, adjusted as provided in section six: *Provided*,  
54 That in the case of a corporation having income from  
55 business activity which is taxable without this state,  
56 its "West Virginia taxable income" shall be such portion  
57 of its taxable income as so defined and adjusted as is  
58 allocated or apportioned to this state under the pro-  
59 visions of section seven.

60           (12) The term "business income" means in-  
61 come arising from transactions and activity in the reg-  
62 ular course of the taxpayer's trade or business and in-  
63 cludes income from tangible and intangible property if  
64 the acquisition and disposition of the property constitute  
65 integral parts of the taxpayer's regular trade or business  
66 operations.

67           (13) "Nonbusiness income" means all income  
68 other than business income.

69           (14) The term "public utility" means any bus-  
70 iness activity to which the jurisdiction of the public ser-  
71 vice commission of West Virginia extends under section  
72 one, article two, chapter twenty-four of the code of West  
73 Virginia.

74           (15) The term "this code" means the code of  
75 West Virginia, one thousand nine hundred thirty-one, as  
76 amended.

77           (16) The term "this state" means the state of  
78 West Virginia.

#### **§11-24-5. Corporations exempt from tax.**

1       The following corporations shall be exempt from the  
2 tax imposed by this article to the extent provided in this  
3 section:

4 (a) Corporations which by reason of their purposes  
5 or activities are exempt from federal income tax: *Pro-*  
6 *vided*, That this exemption shall not apply to the unre-  
7 lated business income, as defined in the Internal Rev-  
8 enue Code, of any such corporation if such income is  
9 subject to federal income tax.

10 (b) Banks, banking associations, trust companies,  
11 building and loan associations, and savings and loan  
12 associations.

13 (c) Insurance companies which pay this state a tax  
14 upon premiums.

15 (d) Production credit associations organized under  
16 the provisions of the federal "Farm Credit Act of 1933":  
17 *Provided*, That this exemption shall not apply to cor-  
18 porations or associations organized under the provisions  
19 of article four, chapter nineteen of this code.

20 (e) Corporations electing to be taxed under subchap-  
21 ter S of the Internal Revenue Code of one thousand nine  
22 hundred fifty-four, as amended: *Provided*, That said  
23 corporations shall file the information return required  
24 by section thirteen-a of this article.

25 (f) Trusts established pursuant to section one hun-  
26 dred eighty-six, chapter seven, title twenty-nine of the  
27 code of the laws of the United States (enacted as sec-  
28 tion three hundred two (c) of the Labor Management  
29 Relations Act, one thousand nine hundred forty-seven),  
30 as amended prior to the first day of January, one thou-  
31 sand nine hundred sixty-seven.

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

1 (a) *General.*—In determining the West Virginia tax-  
2 able income of a corporation, its taxable income as de-  
3 fined for federal income tax purposes shall be adjusted  
4 by the items specified in this section.

5 (b) *Adjustments increasing federal taxable income.*—  
6 There shall be added to federal taxable income (unless  
7 already included in the computation of federal taxable  
8 income):

9 (1) Interests or dividends on obligations or se-  
10 curities of any state or of a political subdivision or auth-

11 ority thereof (other than this state and its political sub-  
12 divisions and authorities), unless made exempt by com-  
13 pact or agreement to which this state is a party;

14 (2) Interest or dividend income on obligations or  
15 securities of any authority, commission or instrumentality  
16 of the United States which the laws of the United  
17 States exempt from federal income tax but not from  
18 state income taxes;

19 (3) Income taxes imposed by this state or any  
20 other taxing jurisdiction, to the extent deductible in de-  
21 termining federal taxable income and not credited against  
22 federal income tax, and the taxes imposed by this state  
23 for which credit against the taxes imposed by section  
24 four is allowed by section nine; and

25 (4) Interest on indebtedness incurred or con-  
26 tinued to purchase or carry obligations or securities the  
27 income from which is exempt from tax under this article,  
28 to the extent deductible in determining federal taxable  
29 income.

30 (c) *Adjustments decreasing federal taxable income.*—  
31 There shall be subtracted from federal taxable income:

32 (1) Interest income on obligations of the United  
33 States and its possessions to the extent includable in  
34 gross income for federal income tax purposes;

35 (2) Interest or dividend income on obligations  
36 or securities of any authority, commission or instrumen-  
37 tality of the United States to the extent includable in  
38 gross income for federal income tax purposes, but exempt  
39 from state income taxes under the laws of the United  
40 States;

41 (3) Any gain from the sale or other disposition  
42 of property having a higher fair market value on the  
43 first day of July, one thousand nine hundred sixty-seven,  
44 than the adjusted basis at said date for federal income  
45 tax purposes: *Provided*, That the amount of this adjust-  
46 ment is limited to that portion of any such gain which  
47 does not exceed the difference between such fair market  
48 value and such adjusted basis;

49 (4) The amount of any refund or credit for  
50 overpayment of income taxes imposed by this state or  
51 any other taxing jurisdiction, to the extent properly in-

52 cluded in gross income for federal income tax purposes;  
53 and

54 (5) The amount of dividends received, to the  
55 extent included in federal taxable income.

56 (6) Thirty-seven and one-half percent of the ex-  
57 cess of net long-term capital gain over net short-term  
58 capital loss as defined in the laws of the United States.

59 (d) *Adjustment resulting from recomputation of*  
60 *net operating loss deduction.*—In determining the West  
61 Virginia taxable income of a corporation entitled to a net  
62 operating loss deduction for the taxable year for federal  
63 income tax purposes, there shall be added to or sub-  
64 tracted from the federal taxable income the amount of  
65 an adjustment reflecting a recomputation of such net  
66 operating loss deduction in which the adjustments re-  
67 quired by subsections (b) and (c) are made for each  
68 taxable year involved in the computation of such net  
69 operating loss deduction.

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

72 (1) If the taxpayer so elects under paragraph  
73 (2) of this subsection, there shall be—

74 (A) subtracted from federal taxable income  
75 the total of the amounts paid or incurred during the tax-  
76 able year for the acquisition, construction or develop-  
77 ment within this state of water pollution control facil-  
78 ities and air pollution control facilities as defined in  
79 section 48 (h) (12) (B) and (C) of the Internal Rev-  
80 enue Code, and

81 (B) added to federal taxable income the  
82 total of the amounts of any allowances for depreciation  
83 and amortization of such water pollution control facilities  
84 and air pollution control facilities, as so defined, to the  
85 extent deductible in determining federal taxable in-  
86 come.

87 (2) The election referred to in paragraph (1)  
88 of this subsection shall be made in the return filed within  
89 the time prescribed by law (including extensions thereof)  
90 for the taxable year in which such amounts were paid  
91 or incurred. Such election shall be made in such manner,  
92 and the scope and application of such election shall be

93 defined, as the tax commissioner may by regulations  
94 prescribe, and shall be irrevocable when made as to all  
95 amounts paid or incurred for any particular water pol-  
96 lution control facility or air pollution control facility.

97 (3) Notwithstanding any other provisions of this  
98 subsection or of section seven to the contrary, if the tax-  
99 payer's federal taxable income is subject to allocation  
100 and apportionment under section seven, the adjustments  
101 prescribed in subparagraphs (A) and (B) of paragraph  
102 (1) of this subsection shall (instead of being made to  
103 the taxpayer's federal taxable income before allocation  
104 and apportionment thereof as provided in section seven)  
105 be made to the portion of the taxpayer's net income,  
106 computed without regard to such adjustments, allocated  
107 and apportioned to this state in accordance with section  
108 seven.

**§11-24-13a. Information return for corporations electing to be  
taxed under subchapter S.**

1 Every corporation electing to be taxed under sub-  
2 chapter S of the Internal Revenue Code of one thousand  
3 nine hundred fifty-four, as amended, shall on or before  
4 the fifteenth day of the third month following the close  
5 of a taxable year file an information return for each tax  
6 year, stating specifically the items of its gross income  
7 and the deductions allowable, the names and addresses  
8 of all persons owning stock in the corporation at any  
9 time during the tax year, the number of shares of stock  
10 owned by each shareholder at all times during the tax  
11 year, the amount of money and other property distributed  
12 by the corporation during the tax year to each share-  
13 holder, the date of each such distribution, and such other  
14 information as the tax commissioner may prescribe. Cor-  
15 porations failing to file information returns by the due  
16 date as prescribed in this section shall be subject to a  
17 penalty of fifty dollars for each failure to file, with such  
18 penalty being collected as other penalties are collected  
19 by the tax commissioner. This section shall take effect  
20 for tax years beginning on or after the first day of July,  
21 one thousand nine hundred seventy-two.

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

Russell G. Brall  
Chairman Senate Committee

Hayden J. Rutledge  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Carson  
Clerk of the Senate

Ch. Blankenship  
Clerk of the House of Delegates

E. H. McCourt  
President of the Senate

Lewis N. W. Manner  
Speaker House of Delegates

The within approved this the 27th  
March day of \_\_\_\_\_, 1972.

Arthur A. Shouse, Jr.  
Governor



3/20/72

10:17 a.m.