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

12/14

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


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
by the context or by definition in this article. Any refer-
ence in this article to the laws of the United States or
to the Internal Revenue Code or to the federal income
tax law shall mean the provisions of the laws of the
United States as relate to the determination of income for
federal income tax purposes. All amendments made to
the laws of the United States prior to the first day of Jan-
uary, one thousand nine hundred seventy-two, shall be
given effect in determining the taxes imposed by this
article for the tax period beginning the first day of July,
one thousand nine hundred seventy-two, and thereafter,
but no amendment to laws of the United States made on
or after the first day of January, one thousand nine hun-
dred seventy-two, shall be given effect.

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

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

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

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

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

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

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

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

(8) The term “tax” includes, within its meaning,
interest and penalties unless the intention to give it a
more limited meaning is disclosed by the context.
The term "commercial domicile" means the principle place from which the trade or business of the taxpayer is directed or managed.

The term "compensation" means wages, salaries, commissions and any form of remuneration paid to employees for personal services.

The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted as provided in section six: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven.

The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

"Nonbusiness income" means all income other than business income.

The term "public utility" means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

The term "this state" means the state of West Virginia.

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

The following corporations shall be exempt from the tax imposed by this article to the extent provided in this section:
(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

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

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

(d) Production credit associations organized under the provisions of the federal “Farm Credit Act of 1933”: Provided, That this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

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

(f) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the Labor Management Relations Act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred sixty-seven.

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

(a) General.—In determining the West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted 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):

(1) Interests or dividends on obligations or securities of any state or of a political subdivision or auth-
ority thereof (other than this state and its political sub-
divisions and authorities), unless made exempt by com-
pact or agreement to which this state is a party;
(2) Interest or dividend income on obligations or
securities of any authority, commission or instrumenta-
ility 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 imposed by this state or any
other taxing jurisdiction, to the extent deductible in de-
termining federal taxable income and not credited against
federal income tax, and the taxes imposed by this state
for which credit against the taxes imposed by section
four is allowed by section nine; and
(4) Interest on indebtedness incurred or con-
tinued to purchase or carry obligations or securities the
income from which is exempt from tax under this article,
to the extent deductible in determining federal taxable
income.
(c) Adjustments decreasing federal taxable income.—
There shall be subtracted from federal taxable income:
(1) Interest income on obligations of the United
States and its possessions to the extent includable in
gross income for federal income tax purposes;
(2) Interest or dividend income on obligations
or securities of any authority, commission or instrumen-
tality of the United States to the extent includable in
gross income for federal income tax purposes, but exempt
from state income taxes under the laws of the United
States;
(3) Any gain from the sale or other disposition
of property having a higher fair market value on the
first day of July, one thousand nine hundred sixty-seven,
than the adjusted basis at said date for federal income
tax purposes: Provided, That the amount of this adjust-
ment is limited to that portion of any such gain which
does not exceed the difference between such fair market
value and such adjusted basis;
(4) The amount of any refund or credit for
overpayment of income taxes imposed by this state or
any other taxing jurisdiction, to the extent properly in-
cluded in gross income for federal income tax purposes; and

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

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

(d) Adjustment resulting from recomputation of net operating loss deduction.—In determining the West Virginia taxable income of a corporation entitled to a net operating loss deduction for the taxable year for federal income tax purposes, there shall be added to or subtracted from the federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction in which the adjustments required by subsections (b) and (c) are made for each taxable year involved in the computation of such net operating loss deduction.

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

(1) If the taxpayer so elects under paragraph (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 and air pollution control facilities as defined in section 48 (h) (12) (B) and (C) of the Internal Revenue Code, and

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

(2) The election referred to in paragraph (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope and application of such election shall be...
defined, as the tax commissioner may by regulations 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 to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in subparagraphs (A) and (B) of paragraph (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) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with section seven.

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

Every corporation electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended, shall on or before the fifteenth day of the third month following the close of a taxable year file an information return for each tax year, stating specifically the items of its gross income and the deductions allowable, the names and addresses of all persons owning stock in the corporation at any time during the tax year, the number of shares of stock owned by each shareholder at all times during the tax year, the amount of money and other property distributed by the corporation during the tax year to each shareholder, the date of each such distribution, and such other information as the tax commissioner may prescribe. Corporations failing to file information returns by the due date as prescribed in this section shall be subject to a penalty of fifty dollars for each failure to file, with such penalty being collected as other penalties are collected by the tax commissioner. This section shall take effect for tax years beginning on or after the first day of July, one thousand nine hundred seventy-two.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
3/20/72
10:17 a.m.