

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-9-82

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982



ENROLLED
Committee Substitute for
SENATE BILL NO. 401

(By Mr. McGraw, Mr. President)



PASSED March 2 1982

In Effect from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 401

(By MR. MCGRAW, MR. PRESIDENT, *original sponsor*)

[Passed March 2, 1982; in effect from passage.]

AN ACT to amend and reenact sections three and six, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act; and amending the definition of West Virginia taxable income by adding an additional adjustment increasing federal taxable income in determining West Virginia taxable income.

Be it enacted by the Legislature of West Virginia:

That sections three 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 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 income
4 taxes, unless a different meaning is clearly required by
5 the context or by definition in this article. Any reference
6 in this article to the laws of the United States or to the
7 Internal Revenue Code or to the federal income tax law
8 shall mean the provisions of the laws of the United States
9 as relate to the determination of income for federal in-
10 come tax purposes. All amendments made to the laws of

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✓

11 the United States prior to the first day of January, one
12 thousand nine hundred eighty-two, shall be given effect
13 in determining the taxes imposed by this article for the
14 tax period beginning the first day of January, one thou-
15 sand nine hundred eighty-one, and thereafter, but no
16 amendment to laws of the United States made on or after
17 the first day of January, one thousand nine hundred
18 eighty-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 com-
22 missioner of the state of West Virginia or his delegate.

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

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

28 (4) The term “foreign corporation” means any cor-
29 poration other than a domestic corporation.

30 (5) The term “state” means any state of the United
31 States, the District of Columbia, the Commonwealth of
32 Puerto Rico, any territory or possession of the United
33 States, and any foreign country or political subdivision
34 thereof.

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

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

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

43 (9) The term “commercial domicile” means the prin-
44 cipal place from which the trade or business of the tax-
45 payer is directed or managed.

46 (10) The term “compensation” means wages, salaries,
47 commissions and any form of remuneration paid to em-
48 ployees for personal services.

49 (11) The term “West Virginia taxable income” means

50 the taxable income of a corporation as defined by the laws
51 of the United States for federal income tax purposes,
52 adjusted as provided in section six: *Provided*, That in the
53 case of a corporation having income from business activ-
54 ity which is taxable without this state, its "West Virginia
55 taxable income" shall be such portion of its taxable in-
56 come as so defined and adjusted as is allocated or appor-
57 tioned to this state under the provisions of section seven
58 of this article.

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

65 (13) The term "nonbusiness income" means all income
66 other than business income.

67 (14) The term "public utility" means any business
68 activity to which the jurisdiction of the public service
69 commission of West Virginia extends under section one,
70 article two, chapter twenty-four of the code of West Vir-
71 ginia.

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

75 (16) The term "this state" means the state of West
76 Virginia.

§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 defined
3 for federal income tax purposes shall be adjusted by the
4 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, the following items, except that adjustment (5)
9 shall be required only with respect to tax periods ending

10 after the thirty-first day of December, one thousand nine
11 hundred eighty-one:

12 (1) Interest or dividends on obligations or securities
13 of any state or of a political subdivision or authority
14 thereof, other than this state and its political subdivisions
15 and authorities, unless made exempt by compact or
16 agreement to which this state is a party;

17 (2) Interest or dividend income on obligations or se-
18 curities of any authority, commission or instrumentality
19 of the United States which the laws of the United States
20 exempt from federal income tax but not from state in-
21 come taxes;

22 (3) Income taxes imposed by this state or any other
23 taxing jurisdiction, to the extent deductible in determin-
24 ing federal taxable income and not credited against feder-
25 al income tax, and the taxes imposed by this state for
26 which credit against the taxes imposed by section four is
27 allowed by section nine;

28 (4) Interest on indebtedness incurred or continued
29 to purchase or carry obligations or securities the income
30 from which is exempt from tax under this article, to the
31 extent deductible in determining federal taxable income;
32 and

33 (5) The deferral value of certain income that is not
34 recognized for federal tax purposes, which value shall
35 be an amount equal to a percentage of the amount allowed
36 as a deduction in determining federal taxable income
37 pursuant to the accelerated cost recovery system under
38 section 168 of the Internal Revenue Code for the federal
39 taxable year, with the percentage of the federal deduc-
40 tion to be added as follows with respect to the following
41 recovery property: three-year property—no modification;
42 five-year property—ten percent; ten-year property—fif-
43 teen percent; fifteen-year public utility property—twenty-
44 five percent; and fifteen-year real property—thirty-five
45 percent: *Provided*, That this modification shall not apply
46 to any person whose federal deduction is determined
47 by the use of the straight line method.

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

50 (1) Interest income on obligations of the United States
51 and its possessions to the extent includible in gross in-
52 come for federal income tax purposes;

53 (2) Interest or dividend income on obligations or securi-
54 ties of any authority, commission or instrumentality of
55 the United States to the extent includible in gross in-
56 come for federal income tax purposes, but exempt from
57 state income taxes under the laws of the United States;

58 (3) Any gain from the sale or other disposition of
59 property having a higher fair market value on the first
60 day of July, one thousand nine hundred sixty-seven, than
61 the adjusted basis at said date for federal income tax
62 purposes: *Provided*, That the amount of this adjustment is
63 limited to that portion of any such gain which does not
64 exceed the difference between such fair market value and
65 such adjusted basis;

66 (4) The amount of any refund or credit for overpay-
67 ment of income taxes imposed by this state or any other
68 taxing jurisdiction, to the extent properly included in
69 gross income for federal income tax purposes;

70 (5) The amount of dividends received, to the extent
71 included in federal taxable income; and

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

75 (d) *Adjustment resulting from recomputation of net*
76 *operating loss deduction.*—In determining the West Vir-
77 ginia taxable income of a corporation entitled to a net
78 operating loss deduction for the taxable year for federal
79 income tax purposes, there shall be added to or subtracted
80 from the federal taxable income the amount of an ad-
81 justment reflecting a recomputation of such net operating
82 loss deduction in which the adjustments required by
83 subsections (b) and (c) are made for each taxable year
84 involved in the computation of such net operating loss
85 deduction.

86 (e) *Special adjustments for expenditures for water*
87 *and air pollution control facilities.*—

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

90 (A) Subtracted from federal taxable income the total
91 of the amounts paid or incurred during the taxable year
92 for the acquisition, construction or development within
93 this state of water pollution control facilities and air
94 pollution control facilities as defined in section 48(h) (12)
95 (B) and (C) of the Internal Revenue Code, and

96 (B) Added to federal taxable income the total of the
97 amounts of any allowances for depreciation and amorti-
98 zation of such water pollution control facilities and air
99 pollution control facilities, as so defined, to the extent
100 deductible in determining federal taxable income.

101 (2) The election referred to in subdivision (1) of this
102 subsection shall be made in the return filed within the
103 time prescribed by law (including extensions thereof)
104 for the taxable year in which such amounts were paid or
105 incurred. Such election shall be made in such manner, and
106 the scope and application of such election shall be defined,
107 as the tax commissioner may by regulations prescribe,
108 and shall be irrevocable when made as to all amounts
109 paid or incurred for any particular water pollution con-
110 trol facility or air pollution control facility.

111 (3) Notwithstanding any other provisions of this sub-
112 section or of section seven to the contrary, if the tax-
113 payer's federal taxable income is subject to allocation
114 and apportionment under section seven, the adjustments
115 prescribed in paragraphs (A) and (B) of subdivision (1)
116 of this subsection shall (instead of being made to the
117 taxpayer's federal taxable income before allocation and
118 apportionment thereof as provided in section seven) be
119 made to the portion of the taxpayer's net income, com-
120 puted without regard to such adjustments, allocated and
121 apportioned to this state in accordance with section
122 seven.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

To take effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

[Handwritten signature]

President of the Senate

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Speaker House of Delegates

The within is approved this the 9

day of March, 1982.

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Governor



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