WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED
Committee Substitute for
SENATE BILL NO. 401

(By 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.

(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference 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 January, one thousand nine hundred eighty-two, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-one, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred eighty-two, shall be given effect.

(b) Certain terms defined.—For purposes of this article:

(1) The term "tax commissioner" means the tax commissioner of the state of West Virginia or his delegate.

(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 Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision 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.

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

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

(11) 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 of this article.

(12) 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.

(13) The term “nonbusiness income” means all income other than business income.

(14) 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.

(15) The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term “this state” means the state of West Virginia.

§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, the following items, except that adjustment (5) shall be required only with respect to tax periods ending
after the thirty-first day of December, one thousand nine hundred eighty-one:

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

(2) Interest or dividend 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 imposed by this state or any other taxing jurisdiction, to the extent deductible in determining 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;

(4) Interest on indebtedness incurred or continued 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; and

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

(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 includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible 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 adjustment 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 included in gross income for federal income tax purposes;

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

(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 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 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 subdivision (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 paragraphs (A) and (B) of 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) 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ________ this the ________ day of ________, 1982.

Governor