

No. 82

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 82

(By Mr. *Stacy, Mr. Palermo, et al.*)

—•—

PASSED March 10, 1984

In Effect from Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**Senate Bill No. 82**

(MR. STACY, MR. PALUMBO, MR. ROGERS, MR. MCGRAW, MR. PRESIDENT,  
MR. HOLMES AND MR. HARMAN, *original sponsors*)

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[Passed March 10, 1984; in effect from passage.]

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AN ACT to amend and reenact sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter eleven, all relating to updating meaning of terms used in the West Virginia personal income tax act and the West Virginia corporation net income tax act; permitting a decreasing modification under the West Virginia personal income tax act to federal adjusted gross income for amounts included therein under section 86 of the Internal Revenue Code for social security benefits, substituted social security benefits and railroad retirement benefits; and making such changes retroactive to the first day of January, one thousand nine hundred eighty-three.

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

That sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article twenty-four of said chapter eleven be amended and reenacted, all to read as follows:

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-9. Meaning of terms.**

1 Any term used in this article shall have the same meaning  
2 as when used in a comparable context in the laws of the  
3 United States relating to income taxes, unless a different  
4 meaning is clearly required. Any reference in this article to  
5 the laws of the United States shall mean the provisions of  
6 the Internal Revenue Code of 1954, as amended, and such  
7 other provisions of the laws of the United States as relate to  
8 the determination of income for federal income tax  
9 purposes. All amendments made to the laws of the United  
10 States prior to the first day of January, one thousand nine  
11 hundred eighty-four, shall be given effect in determining  
12 the taxes imposed by this article for the tax period  
13 beginning the first day of January, one thousand nine  
14 hundred eighty-three, and thereafter, but no amendment to  
15 the laws of the United States made on or after the first day  
16 of January, one thousand nine hundred eighty-four, shall be  
17 given effect.

**§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General.*—The West Virginia adjusted gross income  
2 of a resident individual means his federal adjusted gross  
3 income as defined in the laws of the United States for the  
4 taxable year with the modifications specified in this  
5 section.

6 (b) *Modifications increasing federal adjusted gross*  
7 *income.*—There shall be added to federal adjusted gross  
8 income the following items, except that modifications (5),  
9 (6) and (7) shall be required only with respect to tax periods  
10 ending on or after the first day of January, one thousand  
11 nine hundred eighty-two:

12 (1) Interest income on obligations of any state other  
13 than this state, or of a political subdivision of any such other  
14 state unless created by compact or agreement to which this  
15 state is a party;

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

21 (3) Income taxes imposed by this state or any other  
22 taxing jurisdiction, to the extent deductible in determining  
23 federal adjusted gross income and not credited against  
24 federal income tax;

25 (4) Interest on indebtedness incurred or continued to  
26 purchase or carry obligations or securities the income from  
27 which is exempt from tax under this article, to the extent  
28 deductible in determining federal adjusted gross income;

29 (5) Interest on a depository institution tax-exempt  
30 savings certificate which is allowed as an exclusion from  
31 federal gross income under section 128 of the Internal  
32 Revenue Code, for the federal taxable year;

33 (6) The amount allowed as a deduction from federal  
34 gross income under section 221 of the Internal Revenue  
35 Code by married couples who file a joint federal return for  
36 the federal taxable year; and

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

52 (c) *Modifications reducing federal adjusted gross*  
53 *income.*—There shall be subtracted from federal adjusted  
54 gross income:

55 (1) Interest income on obligations of the United States  
56 and its possessions to the extent includible in gross income  
57 for federal income tax purposes;

58 (2) Interest or dividend income on obligations or  
59 securities of any authority, commission or instrumentality  
60 of the United States to the extent includible in gross income  
61 for federal income tax purposes but exempt from state  
62 income taxes under the laws of the United States;

63 (3) Any gain from the sale or other disposition of  
64 property having a higher fair market value on the first day  
65 of January, one thousand nine hundred sixty-one, than the  
66 adjusted basis at said date for federal income tax purposes:  
67 *Provided*, That the amount of this adjustment is limited to  
68 that portion of any such gain which does not exceed the  
69 difference between such fair market value and such  
70 adjusted basis: *Provided, however*, That if such gain is  
71 considered a long-term capital gain for federal income tax  
72 purposes, the modification shall be limited to forty percent  
73 of such portion of the gain;

74 (4) The amount of any refund or credit for overpayment  
75 of income taxes imposed by this State, or any other taxing  
76 jurisdiction, to the extent properly included in gross income  
77 for federal income tax purposes;

78 (5) Annuities, retirement allowances, returns of  
79 contributions and any other benefit received under the  
80 public employees retirement system, the department of  
81 public safety death, disability and retirement fund, the  
82 state teachers retirement system, and all forms of military  
83 retirement, including regular armed forces, reserves and  
84 national guard, including any survivorship annuities  
85 derived therefrom, to the extent includible in gross income  
86 for federal income tax purposes;

87 (6) Retirement income received in the form of pensions  
88 and annuities after the thirty-first day of December, one  
89 thousand nine hundred seventy-nine, under any police or  
90 firemen's retirement system, including any survivorship  
91 annuities derived therefrom, to the extent includible in  
92 gross income for federal income tax purposes;

93 (7) Federal adjusted gross income in the amount of eight  
94 thousand dollars received from any source after the thirty-  
95 first day of December, one thousand nine hundred seventy-  
96 nine, by any person who has attained the age of sixty-five on  
97 or before the last day of the taxable year, or by any person  
98 certified by proper authority as permanently and totally  
99 disabled, regardless of age, on or before the last day of the  
100 taxable year, to the extent includible in federal adjusted  
101 gross income for federal tax purposes: *Provided*, That if a  
102 person has a medical certification from a prior year and he  
103 is still permanently and totally disabled, a copy of the  
104 original certificate is acceptable as proof of disability. A

105 copy of the form filed for the federal disability income tax  
106 exclusion is acceptable: *Provided, however, That*

107 (i) Where the total modification under subdivisions (1),  
108 (2), (5) and (6) of this subsection is eight thousand dollars  
109 per person or more, no deduction shall be allowed under  
110 this subdivision, and

111 (ii) Where the total modification under subdivisions (1),  
112 (2), (5) and (6) of this subsection is less than eight thousand  
113 dollars per person, the total modification allowed under  
114 this subdivision for all gross income received by such  
115 person shall be limited to the difference between eight  
116 thousand dollars and the sum of modifications under such  
117 subdivisions;

118 (8) Federal adjusted gross income in the amount of eight  
119 thousand dollars received from any source after the thirty-  
120 first day of December, one thousand nine hundred seventy-  
121 nine, by the surviving spouse of any person who had  
122 attained the age of sixty-five or who had been certified as  
123 permanently and totally disabled, to the extent includible  
124 in federal adjusted gross income for federal tax purposes:  
125 *Provided, That*

126 (i) Where the total modification under subdivision (1),  
127 (2), (5), (6) and (7) of this subsection is eight thousand  
128 dollars or more, no deduction shall be allowed under this  
129 subdivision, and

130 (ii) Where the total modification under subdivisions (1),  
131 (2), (5), (6) and (7) of this subsection is less than eight  
132 thousand dollars per person, the total modification allowed  
133 under this subdivision for all gross income received by such  
134 person shall be limited to the difference between eight  
135 thousand dollars and the sum of such subdivisions;

136 (9) Any pay or allowances received, after the thirty-first  
137 day of December, one thousand nine hundred seventy-nine,  
138 by West Virginia residents who have not attained the age of  
139 sixty-five, as compensation for active service in the armed  
140 forces of the United States: *Provided, That* such deduction  
141 shall be limited to an amount not to exceed four thousand  
142 dollars; and

143 (10) Gross income to the extent included in federal  
144 adjusted gross income under section 86 of the Internal  
145 Revenue Code for federal income tax purposes.

146 (d) *Modification for West Virginia fiduciary*

147 *adjustment*.—There shall be added to or subtracted from  
148 federal adjusted gross income, as the case may be, the  
149 taxpayer's share, as beneficiary of an estate or trust, of the  
150 West Virginia fiduciary adjustment determined under  
151 section nineteen of this article.

152 (e) *Partners*.—The amounts of modifications required  
153 to be made under this section by a partner, which relate to  
154 items of income, gain, loss or deduction of a partnership,  
155 shall be determined under section seventeen of this article.

156 (f) *Husband and wife*.—If husband and wife determine  
157 their federal income tax on a joint return but determine  
158 their West Virginia income taxes separately, they shall  
159 determine their West Virginia adjusted gross incomes  
160 separately as if their federal adjusted gross incomes had  
161 been determined separately.

#### 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 in  
3 the laws of the United States relating to federal income  
4 taxes, unless a different meaning is clearly required by the  
5 context or by definition in this article. Any reference in this  
6 article to the laws of the United States or to the Internal  
7 Revenue Code or to the federal income tax law shall mean  
8 the provisions of the laws of the United States as relate to  
9 the determination of income for federal income tax  
10 purposes. All amendments made to the laws of the United  
11 States prior to the first day of January, one thousand nine  
12 hundred eighty-four, shall be given effect in determining  
13 the taxes imposed by this article for the tax period  
14 beginning the first day of January, one thousand nine  
15 hundred eighty-three, and thereafter, but no amendment to  
16 laws of the United States made on or after the first day of  
17 January, one thousand nine hundred eighty-four, shall be  
18 given effect.

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

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

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

25 (3) The term "domestic corporation" means any  
26 corporation organized under the laws of West Virginia.

27 (4) The term "foreign corporation" means any  
28 corporation other than a domestic corporation.

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

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

37 (7) The term "taxpayer" means a corporation subject to  
38 the tax imposed by this article.

39 (8) the term "tax" includes, within its meaning, interest  
40 and penalties, unless the intention to give it a more limited  
41 meaning is disclosed by the context.

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

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

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

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

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

66 (14) The term "public utility" means any business



67 activity to which the jurisdiction of the public service  
68 commission of West Virginia extends under section one,  
69 article two, chapter twenty-four of the code of West  
70 Virginia.

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

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

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

*Samuel E. Holmes*  
.....  
Chairman Senate Committee

*Ronald Anello*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Judd C. Heltz*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Walter P. Hosen*  
.....  
President of the Senate

*W. H. M. See, Jr.*  
.....  
Speaker House of Delegates

The within... *is approved* ..... this the *30* .....  
day of *March* ....., 198*1*.

.....  
*Paul D. Ryan*  
Governor

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