WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Committee Substitute for
SENATE BILL NO. 82

(By Mr. Slaw, Mr. Palumbo, et al.)

PASSED March 10, 1984
In Effect from Passage
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.


1 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 income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other 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-four, 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-three, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred eighty-four, shall be given effect.

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

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

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

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

1 (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 adjusted gross income and not credited against federal income tax;

(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 adjusted gross income;

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

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

(7) 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 adjusted gross 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) Modifications reducing federal adjusted gross income.—There shall be subtracted from federal adjusted gross 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 January, one thousand nine hundred sixty-one, 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: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to forty percent of such portion of the gain;

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

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

(7) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A
copy of the form filed for the federal disability income tax exclusion is acceptable: \textit{Provided, however, That}

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

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

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

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

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

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

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

(d) \textit{Modification for West Virginia fiduciary}
adjustment.—There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

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

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

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-four, 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-three, 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-four, 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.
The term "domestic corporation" means any corporation organized under the laws of West Virginia.

The term "foreign corporation" means any corporation other than a domestic corporation.

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.

The term "taxable year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

The term "taxpayer" means a corporation subject to the tax imposed by this article.

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 principal 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 of this article: 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.

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.

The term "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.
(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.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 30 day of March 1981.

Governor