

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. Palumbo, 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*)

{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.

§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 includable 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 includable 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 includable 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 includable
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.


Chairman Senate Committee


Chairman House Committee

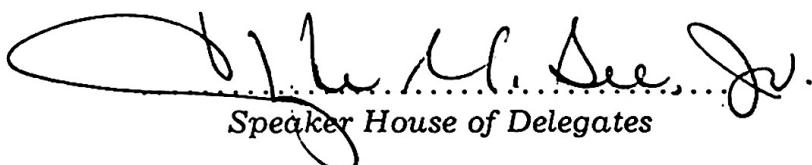
Originated in the Senate.

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

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SECRETARY OF STATE
DEPARTMENT OF STATE