WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

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ENROLLED

HOUSE BILL No. 2009

(By Mr. Speaker, Mr. Albright, Delegate Swann
[By Request of the Executive]

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Passed .................. March 3, 1986

In Effect .................. from Passage
ENROLLED

H. B. 2009

(By Mr. Speaker, Mr. Abright and Delegate Swann)
[By request of the Executive]

[Passed March 3, 1986; in effect from passage.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article twenty-four of said chapter eleven; and to further amend said article twenty-four by adding thereto a new section, designated section three-a, all relating to definitions of terms used in the West Virginia personal income and corporation net income tax acts; updating the meaning of certain terms used to conform with their meaning for federal income tax purposes as of the thirty-first day of December, one thousand nine hundred eighty-five; and making such updating retroactive to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-four.

Be it enacted by the Legislature of West Virginia:

That section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article twenty-four of said chapter eleven be amended and reenacted; and that said article twenty-four be further amended by adding thereto a new section, designated section three-a, all to read as follows:
ARTICLE 21. PERSONAL INCOME TAX.


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-six, 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-five, 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-six, shall be given effect.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

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 related 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-six, 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-five, 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-six, shall be given effect.
§11-4-3a. Specific terms defined.

For purposes of this article:

1. **Business income.**—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, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

2. **Commercial domicile.**—The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

3. **Compensation.**—The term "compensation" means wages, salaries, commission and any other form of remuneration paid to employees for personal services.

4. **Corporation.**—The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

5. **Delegate.**—The term "delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly, by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulation promulgated thereunder.

6. **Domestic corporation.**—The term "domestic corporation" means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

7. **Engaging in business.**—The term "engaging in business" or "doing business" means any activity of a corporation which enjoys the benefits and protection of
(8) **Federal Form 1120.**—The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038, 6046, or other applicable section of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(9) **Fiduciary.**—The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(10) **Fiscal year.**—The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(11) **Includes and including.**—The terms “includes and including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(12) **Nonbusiness income.**—The term “nonbusiness income” means all income other than business income.

(13) **Person.**—The term “person” is to be deemed interchangeable with the term “corporation” in this section.

(14) **Pro forma return.**—The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an
(15) **Public utility.**—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.

(16) **Sales.**—The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(17) **State.**—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.

(18) **Taxable year.**—The term “taxable year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(19) **Tax.**—The term “tax” includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(20) **Tax commissioner.**—The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(21) **Taxpayer.**—The term “taxpayer” means a corporation subject to the tax imposed by this article.

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

(23) **This state.**—The term “this state” means the state of West Virginia.

(24) **West Virginia taxable income.**—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 Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams  
Chairman Senate Committee

Floyd Fuller  
Chairman House Committee

Originating in the House.

Takes effect from passage.

J. B. Miller  
Clerk of the Senate

Donald L. Wolff  
Clerk of the House of Delegates

Dean Transwell  
President of the Senate

Joseph P. Alvey IV  
Speaker of the House of Delegates

The within approved this the 25th day of March, 1986.

Aubie Branin Jr.  
Governor
PRESENTED TO THE
GOVERNOR
Date 3/11/86
Time 2:11 p.m.