

No. 2009

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

— ● —

ENROLLED

HOUSE BILL No. 2009

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

— ● —

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.**§11-21-9. Meaning of terms.**

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

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-3. Meaning of terms; general rule.**

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

§11-4-3a. Specific terms defined.

1 For purposes of this article:

2 (1) *Business income*.—The term “business income”
3 means income arising from transactions and activity in
4 the regular course of the taxpayer’s trade or business
5 and includes income from tangible and intangible
6 property if the acquisition, management and disposition
7 of the property constitute integral parts of the taxpay-
8 er’s regular trade or business operations.

9 (2) *Commercial domicile*.—The term “commercial
10 domicile” means the principal place from which the
11 trade or business of the taxpayer is directed or
12 managed.

13 (3) *Compensation*.—The term “compensation” means
14 wages, salaries, commission and any other form of
15 remuneration paid to employees for personal services.

16 (4) *Corporation*.—The term “corporation” includes a
17 joint-stock company and any association or other
18 organization which is taxable as a corporation under the
19 federal income tax law.

20 (5) *Delegate*.—The term “delegate” in the phrase “or
21 his delegate,” when used in reference to the tax
22 commissioner, means any officer or employee of the
23 state tax department duly authorized by the tax
24 commissioner directly, or indirectly, by one or more
25 redelegations of authority, to perform the functions
26 mentioned or described in this article or regulation
27 promulgated thereunder.

28 (6) *Domestic corporation*.—The term “domestic corpo-
29 ration” means any corporation organized under the laws
30 of West Virginia and certain corporations organized
31 under the laws of the state of Virginia before the
32 twentieth day of June, one thousand eight hundred
33 sixty-three. Every other corporation is a foreign
34 corporation.

35 (7) *Engaging in business*.—The term “engaging in
36 business” or “doing business” means any activity of a
37 corporation which enjoys the benefits and protection of

38 government and laws in this state.

39 (8) *Federal Form 1120*.—The term “Federal Form
40 1120” means the annual federal income tax return of
41 any corporation made pursuant to Section 6012, 6037,
42 6038, 6046, or other applicable section of the United
43 States Internal Revenue Code of 1954, as amended or
44 renumbered, or in successor provisions of the laws of the
45 United States, in respect to the taxable income of a
46 corporation, and filed with the Federal Internal
47 Revenue Service. In the case of a corporation that is
48 exempt from federal income taxes but which has
49 taxable unrelated business income, it means Federal
50 Form 990T. In the case of a corporation that elects to
51 file a federal income tax return as part of an affiliated
52 group, but files as a separate corporation under this
53 article, then as to such corporation Federal Form 1120
54 means its pro forma Federal Form 1120.

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

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

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

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

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

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

77 affiliated group.

78 (15) *Public utility*.—The term “public utility” means
79 any business activity to which the jurisdiction of the
80 public service commission of West Virginia extends
81 under section one, article two, chapter twenty-four of the
82 code of West Virginia.

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

86 (17) *State*.—The term “state” means any state of the
87 United States, the District of Columbia, the Common-
88 wealth of Puerto Rico, any territory or possession of the
89 United States, and any foreign country or political
90 subdivision thereof.

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

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

98 (20) *Tax commissioner*.—The term “tax commis-
99 sioner” means the tax commissioner of the state of West
100 Virginia or his delegate.

101 (21) *Taxpayer*.—The term “taxpayer” means a corpo-
102 ration subject to the tax imposed by this article.

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

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

108 (24) *West Virginia taxable income*.—The term “West
109 Virginia taxable income” means the taxable income of
110 a corporation as defined by the laws of the United States
111 for federal income tax purposes, adjusted, as provided
112 in section six of this article: *Provided*, That in the case
113 of a corporation having income from business activity

114 which is taxable without this state, its "West Virginia
115 taxable income" shall be such portion of its taxable
116 income as so defined and adjusted as is allocated or
117 apportioned to this state under the provisions of section
118 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.

Judd C. Wells

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Don Torheim

President of the Senate

Joseph P. Albright

Speaker of the House of Delegates

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

Arha. Brant Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/86

Time 2:11 p.m.

RECEIVED

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OFFICE OF THE
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86