WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

HOUSE BILL No. 3204

(By Delegate Farley)

Passed June 14, 1987

In Effect From Passage
AN ACT to amend and reenact sections four-e, eleven, twelve, fifty-one and seventy-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to personal income taxes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; changing certain applicable rates; allowing married persons an election to file separate West Virginia personal income tax returns even though they file a joint return for federal income tax purposes for the taxable year; providing a separate rate table for married persons filing separate returns; technical amendments clarifying certain reduction modifications; clarifying that employer withholding taxes are to be calculated using the new, higher personal exemption allowed for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and providing for these amendments to apply to and for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

Be it enacted by the Legislature of West Virginia:

That sections four-e, eleven, twelve, fifty-one and seventy-one, article twenty-one, chapter eleven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax — Taxable years beginning on or after January 1, 1987.

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, estates and trusts. — The tax imposed by section three of this article on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>West Virginia taxable income is:</th>
<th>The tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $10,000</td>
<td>3% of the taxable income</td>
</tr>
<tr>
<td>Over $10,000 but not over $25,000</td>
<td>$300.00 plus 4% of excess</td>
</tr>
<tr>
<td>Over $25,000 but not over $40,000</td>
<td>$900.00 plus 4.5% of excess</td>
</tr>
<tr>
<td>Over $40,000 but not over $60,000</td>
<td>$1,575.00 plus 6% of excess</td>
</tr>
<tr>
<td>Over $60,000</td>
<td>$2,775.00 plus 6.5% of excess</td>
</tr>
</tbody>
</table>

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by section three of this article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>West Virginia taxable income is:</th>
<th>The tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $5,000</td>
<td>3% of the taxable income</td>
</tr>
<tr>
<td>Over $5,000 but not over $15,000</td>
<td>$150.00 plus 4% of excess</td>
</tr>
</tbody>
</table>
35 over $12,500 
36 Over $12,500 but not $20,000 
37 Over $20,000 but not over $30,000 
38 Over $30,000 
39 $450.00 plus 4.5% of excess over $12,500 
40 $787.50 plus 6% of excess over $20,000 
41 $1,387.50 plus 6.5% of excess over $30,000 

(c) **Applicability of this section.** — The provisions of this section, as amended by this act, shall be applicable in determining the rate of tax imposed by this article for all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six, and shall be in lieu of the rates of tax specified in section four-d of this article.

§11-21-11. West Virginia taxable income of resident individual.

1 (a) **General.** — The West Virginia taxable income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia personal exemptions, as determined under this part.

2 (b) **Husband and wife.**

3 (1) If the federal taxable income of husband and wife is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

4 (2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

5 (A) Their tax shall be determined on their joint West Virginia taxable income, or

6 (B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect if they comply with the requirements of the tax commissioner in setting forth information on a single form or on separate forms, as may be required by the tax commissioner.

7 (3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be deter-
mined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

(c) Effective date. — This section, as amended by this act, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§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 unless already included therein 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) 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;

(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: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;
(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: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; 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: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

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

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumental-
ity 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, including federal interest dividends paid to shareholders of a regulated investment company, under section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(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: Provided further, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) The amount of any refund or credit for overpay-
ment 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: Provided,

That notwithstanding any provisions in this code to the
contrary this modification shall be limited to the first two thousand dollars of benefits received under the public employees retirement system, 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 for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(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 six thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, 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: 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 six thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, 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: Provided, That

(i) Where the total modification under subdivisions (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: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(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: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(11) The amount of any lottery prize awarded by the
West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) 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.

§11-21-51. Returns and liabilities.

(a) General. — On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve, in excess of the sum of his West Virginia personal exemptions;

(2) Every resident estate or trust required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year, determined under section eighteen;

(3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year,
(4) Every nonresident estate or trust having items of
income or gain derived from West Virginia sources,
determined in accordance with the applicable rules of
section thirty-two as in the case of a nonresident
individual, in excess of its West Virginia exemption.

(b) Husband and wife.

(1) If the federal income tax liability of husband or
wife is determined on a separate federal return, their
West Virginia income tax liabilities and returns shall
be separate.

(2) If the federal income tax liabilities of husband and
wife other than a husband and wife described in
paragraph (3) of this subsection (b) are determined on
a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax
return, and their tax liabilities shall be joint and
several, or

(B) They may elect to file separate West Virginia
income tax returns on a single or separate form, as may
be required by the tax commissioner, if they comply
with the requirements of the tax commissioner in
setting forth information, and in such event their tax
liabilities shall be separate.

(3) If either husband or wife is a resident and the
other is a nonresident, they shall file separate West
Virginia income tax returns on such single or separate
forms as may be required by the tax commissioner, and
in such event their tax liabilities shall be separate.

(c) Decedents. — The return for any deceased individ-
ual shall be made and filed by his executor, adminis-
trator, or other person charged with his property.

(d) Individuals under a disability. — The return for
an individual who is unable to make a return by reason
of minority or other disability shall be made and filed
by his guardian, committee, fiduciary or other person
charged with the care of his person or property (other
than a receiver in possession of only a part of his
property, or by his duly authorized agent.

(e) Estates and trusts. — The return for an estate or
trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. — If two or more fiduciaries are
acting jointly, the return may be made by any one of
them.

(g) Tax a debt. — Any tax under this article, and any
increase, interest or penalty thereon, shall, from the
time it is due and payable, be a personal debt of the
person liable to pay the same, to the state of West
Virginia.

(h) Cross reference. — For provisions as to information
returns by partnership, employers and other person, see
section fifty-eight.

(i) Effective date. — This section, as amended by this
act, shall apply to all taxable years beginning after the
thirty-first day of December, one thousand nine hundred
eighty-six.

§11-21-71. Requirement of withholding tax from wages.

(a) General. — Every employer maintaining an office
or transacting business within this state and making
payment of any wage taxable under this article to a
resident or nonresident individual shall deduct and
withhold from such wages for each payroll period a tax
computed in such manner as to result, so far as
practicable, in withholding from the employee's wages
during each calendar year an amount substantially
equivalent to the tax reasonably estimated to be due
under this article resulting from the inclusion in the
employee's West Virginia adjusted gross income of his
wages received during such calendar year. The method
of determining the amount to be withheld shall be
prescribed by the tax commissioner, with due regard to
the West Virginia withholding exemption of the em-
ployee. This section shall not apply to payments by the
United States for service in the armed forces of the
United States.
(b) Withholding exemptions. — For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) With respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, the amount of each West Virginia exemption shall be six hundred dollars whether the individual is a resident or nonresident. With respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-three, and prior to the first day of January, one thousand nine hundred eighty-four, said exemption shall be seven hundred dollars and with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-four, and prior to the first day of January, one thousand nine hundred eighty-seven, said exemption shall be eight hundred dollars. With respect to any taxable year beginning after the thirty-first day of December, one thousand nine hundred eighty-six, said exemption shall be two thousand dollars.

(c) Exception for certain nonresidents. — If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the tax commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

(d) Effective date. — The provisions of this section, as amended by this act, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ................. this the ............. day of ................., 1987.

Governor
PRESENTED TO THE
GOVERNOR
Date 6/18/87
Time 4:16 p.m.