

No: 3204

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

HOUSE BILL No. 3204

(By Delegate Farley)



Passed June 14, 1987

In Effect From Passage

ENROLLED
H. B. 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.

1 (a) *Rate of tax on individuals (except married individuals*
 2 *filing separate returns), individuals filing joint*
 3 *returns, heads of households, estates and trusts.* — The
 4 tax imposed by section three of this article on the West
 5 Virginia taxable income of every individual (except
 6 married individuals filing separate returns); every
 7 individual who is a head of a household in the determi-
 8 nation of his or her federal income tax for the taxable
 9 year; every husband and wife who file a joint return
 10 under this article; every individual who is entitled to file
 11 his or her federal income tax return for the taxable year
 12 as a surviving spouse; and every estate and trust shall
 13 be determined in accordance with the following table:

14 If the West Virginia	
15 taxable income is:	The tax is:
16 Not over \$10,000	3% of the taxable income
17 Over \$10,000 but not	\$300.00 plus 4% of excess
18 over \$25,000	over \$10,000
19 Over \$25,000 but not	\$900.00 plus 4.5% of excess
20 over \$40,000	over \$25,000
21 Over \$40,000 but not	\$1,575.00 plus 6% of excess
22 over \$60,000	over \$40,000
23 Over \$60,000	\$2,775.00 plus 6.5% of excess
24	over \$60,000

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

31 If the West Virginia	
32 taxable income is:	The tax is:
33 Not over \$5,000	3% of the taxable income
34 Over \$5,000 but not	\$150.00 plus 4% of excess

35	over \$12,500	over \$5,000
36	Over \$12,500 but not	\$450.00 plus 4.5% of
37	over \$20,000	excess over \$12,500
38	Over \$20,000 but not	\$787.50 plus 6% of excess
39	over \$30,000	over \$20,000
40	Over \$30,000	\$1,387.50 plus 6.5% of
41		excess over \$30,000

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

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

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

5 (b) *Husband and wife.*

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

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

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

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

21 (3) If either husband or wife is a resident and the
 22 other is a nonresident, separate taxes shall be deter-

23 mined on their separate West Virginia taxable incomes
24 on such single or separate forms as may be required by
25 the tax commissioner, unless both elect to determine
26 their joint West Virginia taxable income as if both were
27 residents.

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

**§11-21-12. West Virginia adjusted gross income of resi-
dent individual.**

1 (a) *General.* — The West Virginia adjusted gross
2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-
5 tions specified in this section.

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

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

17 (2) Interest or dividend income on obligations or
18 securities of any authority, commission or instrumental-
19 ity of the United States, which the laws of the United
20 States exempt from federal income tax but not from
21 state income taxes;

22 (3) Income taxes imposed by this state or any other
23 taxing jurisdiction, to the extent deductible in determin-
24 ing federal adjusted gross income and not credited
25 against federal income tax: *Provided,* That this modifi-
26 cation shall not be made for taxable years beginning
27 after the thirty-first day of December, one thousand nine
28 hundred eighty-six;

29 (4) Interest on indebtedness incurred or continued to
30 purchase or carry obligations or securities the income
31 from which is exempt from tax under this article, to the
32 extent deductible in determining federal adjusted gross
33 income;

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

38 (6) The amount allowed as a deduction from federal
39 gross income under section 221 of the Internal Revenue
40 Code by married couples who file a joint federal return
41 for the federal taxable year: *Provided*, That this
42 modification shall not be made for taxable years
43 beginning after the thirty-first day of December, one
44 thousand nine hundred eighty-six; and

45 (7) The deferral value of certain income that is not
46 recognized for federal tax purposes, which value shall
47 be an amount equal to a percentage of the amount
48 allowed as a deduction in determining federal adjusted
49 gross income pursuant to the accelerated cost recovery
50 system under section 168 of the Internal Revenue Code
51 for the federal taxable year, with the percentage of the
52 federal deduction to be added as follows with respect to
53 the following recovery property: Three-year property —
54 no modification; five-year property — ten percent; ten-
55 year property — fifteen percent; fifteen-year public
56 utility property — twenty-five percent; and fifteen-year
57 real property — thirty-five percent: *Provided*, That this
58 modification shall not apply to any person whose federal
59 deduction is determined by the use of the straight line
60 method: *Provided, however*, That this modification shall
61 not be made for taxable years beginning after the thirty-
62 first day of December, one thousand nine hundred
63 eighty-six;

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

67 (1) Interest income on obligations of the United States
68 and its possessions to the extent includable in gross

69 income for federal income tax purposes;

70 (2) Interest or dividend income on obligations or
71 securities of any authority, commission or instrumental-
72 ity of the United States to the extent includible in gross
73 income for federal income tax purposes but exempt
74 from state income taxes under the laws of the United
75 States, including federal interest dividends paid to
76 shareholders of a regulated investment company, under
77 section 852 of the Internal Revenue Code for taxable
78 years ending after the thirtieth day of June, one
79 thousand nine hundred eighty-seven;

80 (3) Any gain from the sale or other disposition of
81 property having a higher fair market value on the first
82 day of January, one thousand nine hundred sixty-one,
83 than the adjusted basis at said date for federal income
84 tax purposes: *Provided*, That the amount of this
85 adjustment is limited to that portion of any such gain
86 which does not exceed the difference between such fair
87 market value and such adjusted basis: *Provided*,
88 *however*, That if such gain is considered a long-term
89 capital gain for federal income tax purposes, the
90 modification shall be limited to forty percent of such
91 portion of the gain: *Provided further*, That this modifi-
92 cation shall not be made for taxable years beginning
93 after the thirty-first day of December, one thousand nine
94 hundred eighty-six;

95 (4) The amount of any refund or credit for overpay-
96 ment of income taxes imposed by this state, or any other
97 taxing jurisdiction, to the extent properly included in
98 gross income for federal income tax purposes;

99 (5) Annuities, retirement allowances, returns of
100 contributions and any other benefit received under the
101 public employees retirement system, the department of
102 public safety death, disability and retirement fund, the
103 state teachers retirement system and all forms of
104 military retirement, including regular armed forces,
105 reserves and national guard, including any survivorship
106 annuities derived therefrom, to the extent includible in
107 gross income for federal income tax purposes: *Provided*,
108 That notwithstanding any provisions in this code to the

109 contrary this modification shall be limited to the first
110 two thousand dollars of benefits received under the
111 public employees retirement system, the state teachers
112 retirement system and all forms of military retirement
113 including regular armed forces, reserves and national
114 guard, including any survivorship annuities derived
115 therefrom, to the extent includible in gross income for
116 federal income tax purposes for taxable years beginning
117 after the thirty-first day of December, one thousand nine
118 hundred eighty-six;

119 (6) Retirement income received in the form of pen-
120 sions and annuities after the thirty-first day of De-
121 cember, one thousand nine hundred seventy-nine, under
122 any police or firemen's retirement system, including any
123 survivorship annuities derived therefrom, to the extent
124 includible in gross income for federal income tax
125 purposes;

126 (7) Federal adjusted gross income in the amount of six
127 thousand dollars received from any source after the
128 thirty-first day of December, one thousand nine hundred
129 eighty-six, by any person who has attained the age of
130 sixty-five on or before the last day of the taxable year,
131 or by any person certified by proper authority as
132 permanently and totally disabled, regardless of age, on
133 or before the last day of the taxable year, to the extent
134 includible in federal adjusted gross income for federal
135 tax purposes: *Provided*, That if a person has a medical
136 certification from a prior year and he is still perman-
137 ently and totally disabled, a copy of the original
138 certificate is acceptable as proof of disability. A copy of
139 the form filed for the federal disability income tax
140 exclusion is acceptable: *Provided, however*, That

141 (i) Where the total modification under subdivisions
142 (1), (2), (5) and (6) of this subsection is eight thousand
143 dollars per person or more, no deduction shall be
144 allowed under this subdivision, and

145 (ii) Where the total modification under subdivisions
146 (1), (2), (5) and (6) of this subsection is less than eight
147 thousand dollars per person, the total modification
148 allowed under this subdivision for all gross income

149 received by such person shall be limited to the differ-
150 ence between eight thousand dollars and the sum of
151 modifications under such subdivisions;

152 (8) Federal adjusted gross income in the amount of six
153 thousand dollars received from any source after the
154 thirty-first day of December, one thousand nine hundred
155 eighty-six, by the surviving spouse of any person who
156 had attained the age of sixty-five or who had been
157 certified as permanently and totally disabled, to the
158 extent includible in federal adjusted gross income for
159 federal tax purposes: *Provided*, That

160 (i) Where the total modification under subdivisions
161 (1), (2), (5), (6) and (7) of this subsection is eight thousand
162 dollars or more, no deduction shall be allowed under this
163 subdivision, and

164 (ii) Where the total modification under subdivisions
165 (1), (2), (5), (6) and (7) of this subsection is less than eight
166 thousand dollars per person, the total modification
167 allowed under this subdivision for all gross income
168 received by such person shall be limited to the differ-
169 ence between eight thousand dollars and the sum of such
170 subdivisions;

171 (9) Any pay or allowances received, after the thirty-
172 first day of December, one thousand nine hundred
173 seventy-nine, by West Virginia residents who have not
174 attained the age of sixty-five, as compensation for active
175 service in the armed forces of the United States:
176 *Provided*, That such deduction shall be limited to an
177 amount not to exceed four thousand dollars: *Provided*,
178 *however*, That this modification shall not be made for
179 taxable years beginning after the thirty-first day of
180 December, one thousand nine hundred eighty-six;

181 (10) Gross income to the extent included in federal
182 adjusted gross income under section 86 of the Internal
183 Revenue Code for federal income tax purposes:
184 *Provided*, That this modification shall not be made for
185 taxable years beginning after the thirty-first day of
186 December, one thousand nine hundred eighty-six;

187 (11) The amount of any lottery prize awarded by the

188 West Virginia state lottery commission, to the extent
189 properly included in gross income for federal income tax
190 purposes; and

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

193 (d) *Modification for West Virginia fiduciary adjust-*
194 *ment.* — There shall be added to or subtracted from
195 federal adjusted gross income, as the case may be, the
196 taxpayer's share, as beneficiary of an estate or trust, of
197 the West Virginia fiduciary adjustment determined
198 under section nineteen of this article.

199 (e) *Partners.* — The amounts of modifications re-
200 quired to be made under this section by a partner, which
201 relate to items of income, gain, loss or deduction of a
202 partnership, shall be determined under section seven-
203 teen of this article.

204 (f) *Husband and wife.* — If husband and wife deter-
205 mine their federal income tax on a joint return but
206 determine their West Virginia income taxes separately,
207 they shall determine their West Virginia adjusted gross
208 incomes separately as if their federal adjusted gross
209 incomes had been determined separately.

§11-21-51. Returns and liabilities.

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

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

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

14 (3) Every nonresident individual having any West
15 Virginia adjusted gross income for the taxable year,

16 determined under section thirty-two, in excess of the
17 sum of his West Virginia personal exemptions; and

18 (4) Every nonresident estate or trust having items of
19 income or gain derived from West Virginia sources,
20 determined in accordance with the applicable rules of
21 section thirty-two as in the case of a nonresident
22 individual, in excess of its West Virginia exemption.

23 (b) *Husband and wife.*

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

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

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

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

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

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

49 (d) *Individuals under a disability.* — The return for
50 an individual who is unable to make a return by reason
51 of minority or other disability shall be made and filed
52 by his guardian, committee, fiduciary or other person
53 charged with the care of his person or property (other

54 than a receiver in possession of only a part of his
55 property), or by his duly authorized agent.

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

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

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

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

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

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

1 (a) *General.* — Every employer maintaining an office
2 or transacting business within this state and making
3 payment of any wage taxable under this article to a
4 resident or nonresident individual shall deduct and
5 withhold from such wages for each payroll period a tax
6 computed in such manner as to result, so far as
7 practicable, in withholding from the employee's wages
8 during each calendar year an amount substantially
9 equivalent to the tax reasonably estimated to be due
10 under this article resulting from the inclusion in the
11 employee's West Virginia adjusted gross income of his
12 wages received during such calendar year. The method
13 of determining the amount to be withheld shall be
14 prescribed by the tax commissioner, with due regard to
15 the West Virginia withholding exemption of the em-
16 ployee. This section shall not apply to payments by the
17 United States for service in the armed forces of the
18 United States.

19 (b) *Withholding exemptions.* — For purposes of this
20 section:

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

29 (2) With respect to any taxable year prior to the first
30 day of January, one thousand nine hundred eighty-three,
31 the amount of each West Virginia exemption shall be
32 six hundred dollars whether the individual is a resident
33 or nonresident. With respect to any taxable year
34 beginning on or after the first day of January, one
35 thousand nine hundred eighty-three, and prior to the
36 first day of January, one thousand nine hundred eighty-
37 four, said exemption shall be seven hundred dollars and
38 with respect to any taxable year beginning on or after
39 the first day of January, one thousand nine hundred
40 eighty-four, and prior to the first day of January, one
41 thousand nine hundred eighty-seven, said exemption
42 shall be eight hundred dollars. With respect to any
43 taxable year beginning after the thirty-first day of
44 December, one thousand nine hundred eighty-six, said
45 exemption shall be two thousand dollars.

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

55 (d) *Effective date.* — The provisions of this section, as
56 amended by this act, shall apply to all taxable years
57 beginning after the thirty-first day of December, one
58 thousand nine hundred eighty-six.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams

Chairman Senate Committee

J. L. Settle

Chairman House Committee

Originating in the House.

Takes effect from passage.

Leid C. Hillis

Clerk of the Senate

Donald J. Koop

Clerk of the House of Delegates

Dan Toussaint

President of the Senate

W. O. Wall

Speaker of the House of Delegates

The within *appeared* this the *29th*
June
day of _____, 1987.

Reuben R. Rains Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 6/18/87

Time 4:16 p.m.

RECEIVED

1987 JUN 30 PM 2: 29

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE