WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED
Com. Sub. for
HOUSE BILL No. 4472

(By Mr. Speaker, Mr. Chambers, and
Delegate Swann)
(By request of the Executive)

Passed ........................................... March 12, 1988

in Effect ........................................... Passage
AN ACT to amend and reenact sections nine, twelve, sixteen, thirty-six and forty, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections seventeen-a, thirty-seven-a, fifty-one-a and ninety-four-a, all relating to personal income tax; updating references to the Internal Revenue Code; and making such updating retroactive to taxable years beginning on or after the first day of January, one thousand nine hundred eighty-seven; providing a decreasing modification to federal adjusted gross income for interest paid on obligations of the state of West Virginia, its agencies and subdivisions that is exempt from personal income tax by law; clarifying certain decreasing modifications by setting for the requirement that the income must be from a West Virginia public employees retirement system, a West Virginia teachers retirement system, all forms of military retirement, a West Virginia department of public safety retirement system, West Virginia police or West Virginia firemen's systems, including those at a political subdivision level, in order to take the decreasing modification; providing a definition of
surviving spouse; providing a personal exemption for certain individuals denied one on a federal return; providing resident and nonresident S corporation shareholder's modifications; limiting the personal exemption of a nonresident individual; providing that credit for income tax of state of residence may only be allowed pursuant to a written agreement between the state tax commissioner and the nonresident's state of residence; allowing the filing of composite returns; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

That sections nine, twelve, sixteen, thirty-six and forty, 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 said article twenty-one be further amended by adding thereto four new sections, designated sections seventeen-a, thirty-seven-a, fifty-one-a and ninety-four-a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.


1 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 1986, 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-eight, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred eighty-seven, or 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-eight, shall be given effect.
§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:

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
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37 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

38 (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;

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

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

41 (2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia 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 or of the state of West Virginia, including federal interest or 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: \textit{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: \textit{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: \textit{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 overpayment 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 West Virginia public employees retirement system, the West Virginia 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: \textit{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 West Virginia public employees retirement system, the West Virginia 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 West Virginia police, West Virginia firemen's retirement system or the West Virginia department of public safety death, disability and retirement fund, 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 eight 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 eight 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 differ-
ence 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: Pro-
vided, 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: Pro-
vided, 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 adjust-
ment.**—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 and S corporation shareholders.—The
amounts of modifications required to be made under this
section by a partner or an S corporation shareholder,
which relate to items of income, gain, loss or deduction
of a partnership or an S corporation, shall be deter-
mmed under section seventeen of this article.

(f) Husband and wife.—If husband and wife deter-
mine 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.

§11-21-16. West Virginia personal exemptions of resident
individual.

(a) General.—For any tax imposed under the provi-
sions of this article with respect to any taxable year
prior to the first day of January, one thousand nine
hundred eighty-three, a resident individual shall be
allowed a West Virginia exemption of six hundred
dollars for each exemption for which he is entitled to
a deduction for the taxable year for federal income tax
purposes. 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; with respect
to any taxable year beginning on or after the first day
of January, one thousand nine hundred eighty-four, said
exemption shall be eight hundred dollars; and with
respect to any taxable year beginning on or after the
first day of January, one thousand nine hundred eighty-
seven, said exemption shall be two thousand dollars.

(b) Husband and wife.—If the West Virginia income
taxes of a husband and wife are separately determined
but their federal income tax is determined on a joint
return, each of them shall be separately entitled, with
respect to any taxable year prior to the first day of
January, one thousand nine hundred eighty-three, to a West Virginia exemption of six hundred dollars for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns. 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; with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-four, said exemption shall be eight hundred dollars; and with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-seven, said exemption shall be two thousand dollars.

(c) Surviving spouse.—For taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six, a surviving spouse shall be allowed one additional exemption of two thousand dollars for the two taxable years beginning after the year of death of the deceased spouse.

For purposes of this section and section twelve of this article, a surviving spouse means a taxpayer whose spouse died during the taxable year prior to the taxable year for which the annual return is being filed and who has not remarried at any time before the end of the taxable year for which the annual return is being filed.

(d) Certain dependents.—Notwithstanding any provisions in this section, for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six, a resident individual whose exemption amount for federal tax purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986, shall be allowed a single West Virginia exemption in the amount of five hundred dollars.

§11-21-17a. Resident shareholders of S corporations.

(a) S corporation shareholder's modifications. — In determining West Virginia adjusted gross income and West Virginia taxable income of a resident S corpora-
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tion shareholder, any modification described in section
twelve (b), (c) or (d), which relates to an item of income,
gain, loss or deduction shall be made in accordance with
the S corporation shareholder's pro rata share, for
federal income tax purposes, of the items to which the
modifications relate. Where a shareholder's pro rata
share of any such item is not required to be taken into
account separately for federal income tax purposes, the
shareholder's pro rata share of such item shall be his
pro rata share for federal income tax purposes of S
corporation taxable income or loss generally.

(b) Character of items.—Each item of S corporation
income, gain, loss or deduction shall have the same
character for a shareholder under this article as for
federal income tax purposes. Where an item is not
characterized for federal income tax purposes, it shall
have the same character for a shareholder as if realized
directly from the source from which realized by the S
corporation, or incurred in the same manner as incurred
by the S corporation.

§11-21-36. West Virginia personal exemptions of a
nonresident individual.

A nonresident individual shall be allowed the same
West Virginia exemptions as are allowed by section
sixteen to a resident individual: Provided, That for
taxable years beginning after the thirty-first day of
December, one thousand nine hundred eighty-seven,
such exemptions shall, in the case of nonresident
individuals, be the product of the amount allowed as a
personal exemption for a West Virginia resident
multiplied by the ratio the nonresident individual’s West
Virginia source income bears to that nonresident
individual’s federal adjusted gross income for the
taxable year.


In determining West Virginia adjusted gross income
of a nonresident shareholder of any S corporation, there
shall be included only the portion derived from or
connected with West Virginia sources of such share-
holders pro rata share, for federal income tax purposes,
of items of income, gain, loss and deduction, as such portion shall be determined under regulations of the tax commissioner consistent with the applicable rules of section thirty-two. In determining West Virginia taxable income of a nonresident shareholder of any S corporation, there shall be attributed to him or her his or her pro rate share, for federal income tax purposes, of those S corporation items of deduction which are deductible by him under the applicable rules of section thirty-five.

§11-21-40. Credit for income tax of state of residence.

(a) General.—A nonresident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, of which the taxpayer is a resident.

(b) Limitation.—The credit under this section shall not exceed either:

(1) The percentage of the other tax determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of his income subject to such other tax, or

(2) The percentage of the tax otherwise due under this article, determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of the taxpayer's West Virginia income.

(c) Exceptions.—No credit may be allowed under this section for a taxable year beginning after the thirty-first day of December, one thousand nine hundred eighty-seven, except pursuant to a written agreement between this state and the nonresident individual's state of residence. The state tax commissioner is hereby authorized to enter into such agreements necessary to effectuate the purpose of this section when he determines that such agreements are in the best interest of this state and its residents.

(d) Definition.—For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The income derived from West Virginia sources by an estate or trust, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual.

§11-21-51a. Composite returns.

(a) Any return required by this article for nonresident individuals who are:

(1) Partners in a partnership deriving income from a West Virginia source or sources, or

(2) Shareholders of a corporation which made an election under 26 U.S.C. §1362(a) (S corporations) for the taxable year, or

(3) Who have received a distribution from an estate or trust having income from a West Virginia source or sources, may, upon payment of a composite return processing fee of fifty dollars, file a composite return in accordance with the provisions of this section.

(b) In filing a composite return and determining the tax due thereon, no personal exemptions may be utilized, and the rate of tax shall be six and one-half percent of the taxable income determined in accordance with the applicable provisions of this article. The entity or entities, to which the composite return relates are responsible for collection and remittance of all income tax due at the time the return is filed; Provided, That credit is allowed for severance taxes paid by the partnership, trust, estate or corporation electing S status pursuant to 26 U.S.C. §1362(a) for the taxable year.

(c) The composite return shall be filed in a manner and form acceptable to and in accordance with instructions from the commissioner, and need not be signed by all nonresident individuals on whose behalf the return is filed; Provided, That the return is signed by a partner, in the case of a partnership, a corporate officer, in the case of a corporation, by a trustee, in the case of a trust
or by an executor or administrator in the case of an estate.

(d) For the purposes of this section a composite return means a return filed on a group basis as though there was one taxpayer, and sets forth the name, address, taxpayer identification number and percent ownership or interest of each nonresident individual in addition to return information as that term is defined in section five-d, article ten of this chapter; the term includes block filing: Provided, That nothing in this section shall prohibit a nonresident from also filing a separate nonresident personal income tax return for the taxable year and such return shall be filed if the nonresident has income from any other West Virginia source.

§11-21-94a. Effective date.

The provisions of this article as amended or added by this act shall take effect on the first day of July, one thousand nine hundred eighty-eight, and apply to all taxable years ending after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within .................................. this the .................... day of .................................., 1988.

[Signature]
Governor