

4472

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 *from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4472

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)
[By request of the Executive]

[Passed March 12, 1988; in effect from 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.

§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 1986, 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-eight, shall be given effect in determining the
13 taxes imposed by this article for any taxable year
14 beginning the first day of January, one thousand nine
15 hundred eighty-seven, or thereafter, but no amendment
16 to the laws of the United States made on or after the
17 first day of January, one thousand nine hundred eighty-
18 eight, shall be given effect.

§11-21-12. West Virginia adjusted gross income of resident 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:

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

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

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

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

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

35 (6) The amount allowed as a deduction from federal
36 gross income under section 221 of the Internal Revenue

37 Code by married couples who file a joint federal return
38 for the federal taxable year: *Provided*, That this
39 modification shall not be made for taxable years
40 beginning after the thirty-first day of December, one
41 thousand nine hundred eighty-six; and

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

61 (c) *Modifications reducing federal adjusted gross*
62 *income.*—There shall be subtracted from federal ad-
63 justed gross income to the extent included therein:

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

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

77 thousand nine hundred eighty-seven;

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

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

97 (5) Annuities, retirement allowances, returns of
98 contributions and any other benefit received under the
99 West Virginia public employees retirement system, the
100 West Virginia state teachers retirement system and all
101 forms of military retirement, including regular armed
102 forces, reserves and national guard, including any
103 survivorship annuities derived therefrom, to the extent
104 includible in gross income for federal income tax
105 purposes: *Provided*, That notwithstanding any provi-
106 sions in this code to the contrary this modification shall
107 be limited to the first two thousand dollars of benefits
108 received under the West Virginia public employees
109 retirement system, the West Virginia state teachers
110 retirement system and all forms of military retirement
111 including regular armed forces, reserves and national
112 guard, including any survivorship annuities derived
113 therefrom, to the extent includible in gross income for
114 federal income tax purposes for taxable years beginning
115 after the thirty-first day of December, one thousand nine
116 hundred eighty-six;

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

126 (7) Federal adjusted gross income in the amount of
127 eight thousand dollars received from any source after
128 the thirty-first day of December, one thousand nine
129 hundred eighty-six, by any person who has attained the
130 age of sixty-five on or before the last day of the taxable
131 year, 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
153 eight thousand dollars received from any source after
154 the thirty-first day of December, one thousand nine
155 hundred eighty-six, by the surviving spouse of any
156 person who had attained the age of sixty-five or who had

157 been certified as permanently and totally disabled, to
158 the extent includible in federal adjusted gross income
159 for 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 and S corporation shareholders.*—The
200 amounts of modifications required to be made under this
201 section by a partner or an S corporation shareholder,
202 which relate to items of income, gain, loss or deduction
203 of a partnership or an S corporation, shall be deter-
204 mined under section seventeen of this article.

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

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

1 (a) *General.*—For any tax imposed under the provi-
2 sions of this article with respect to any taxable year
3 prior to the first day of January, one thousand nine
4 hundred eighty-three, a resident individual shall be
5 allowed a West Virginia exemption of six hundred
6 dollars for each exemption for which he is entitled to
7 a deduction for the taxable year for federal income tax
8 purposes. With respect to any taxable year beginning on
9 or after the first day of January, one thousand nine
10 hundred eighty-three, and prior to the first day of
11 January, one thousand nine hundred eighty-four, said
12 exemption shall be seven hundred dollars; with respect
13 to any taxable year beginning on or after the first day
14 of January, one thousand nine hundred eighty-four, said
15 exemption shall be eight hundred dollars; and with
16 respect to any taxable year beginning on or after the
17 first day of January, one thousand nine hundred eighty-
18 seven, said exemption shall be two thousand dollars.

19 (b) *Husband and wife.*—If the West Virginia income
20 taxes of a husband and wife are separately determined
21 but their federal income tax is determined on a joint
22 return, each of them shall be separately entitled, with
23 respect to any taxable year prior to the first day of

24 January, one thousand nine hundred eighty-three, to a
 25 West Virginia exemption of six hundred dollars for each
 26 federal exemption to which he would be separately
 27 entitled for the taxable year if their federal income
 28 taxes had been determined on separate returns. With
 29 respect to any taxable year beginning on or after the
 30 first day of January, one thousand nine hundred eighty-
 31 three, and prior to the first day of January, one thousand
 32 nine hundred eighty-four, said exemption shall be seven
 33 hundred dollars; with respect to any taxable year
 34 beginning on or after the first day of January, one
 35 thousand nine hundred eighty-four, said exemption shall
 36 be eight hundred dollars; and with respect to any
 37 taxable year beginning on or after the first day of
 38 January, one thousand nine hundred eighty-seven, said
 39 exemption shall be two thousand dollars.

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

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

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

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

1 (a) *S corporation shareholder's modifications*. — In
 2 determining West Virginia adjusted gross income and
 3 West Virginia taxable income of a resident S corpora-

4 tion shareholder, any modification described in section
5 twelve (b), (c) or (d), which relates to an item of income,
6 gain, loss or deduction shall be made in accordance with
7 the S corporation shareholder's pro rata share, for
8 federal income tax purposes, of the items to which the
9 modifications relate. Where a shareholder's pro rata
10 share of any such item is not required to be taken into
11 account separately for federal income tax purposes, the
12 shareholder's pro rata share of such item shall be his
13 pro rata share for federal income tax purposes of S
14 corporation taxable income or loss generally.

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

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

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

§11-21-37a. Nonresident S corporation shareholders.

1 In determining West Virginia adjusted gross income
2 of a nonresident shareholder of any S corporation, there
3 shall be included only the portion derived from or
4 connected with West Virginia sources of such share-
5 holders pro rata share, for federal income tax purposes,

6 of items of income, gain, loss and deduction, as such
 7 portion shall be determined under regulations of the tax
 8 commissioner consistent with the applicable rules of
 9 section thirty-two. In determining West Virginia
 10 taxable income of a nonresident shareholder of any S
 11 corporation, there shall be attributed to him or her his
 12 or her pro rate share, for federal income tax purposes,
 13 of those S corporation items of deduction which are
 14 deductible by him under the applicable rules of section
 15 thirty-five.

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

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

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

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

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

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

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

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

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

§11-21-51a. Composite returns.

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

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

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

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

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

25 (c) The composite return shall be filed in a manner
26 and form acceptable to and in accordance with instruc-
27 tions from the commissioner, and need not be signed by
28 all nonresident individuals on whose behalf the return
29 is filed: *Provided*, That the return is signed by a partner,
30 in the case of a partnership, a corporate officer, in the
31 case of a corporation, by a trustee, in the case of a trust

32 or by an executor or administrator in the case of an
33 estate.

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

§11-21-94a. Effective date.

1 The provisions of this article as amended or added by
2 this act shall take effect on the first day of July, one
3 thousand nine hundred eighty-eight, and apply to all
4 taxable years ending after that date: *Provided*, That if
5 an effective date is expressly provided in such provision,
6 that specific effective date shall control in lieu of this
7 general effective date provision.

Handwritten signatures and initials:
- Top left: "HBS"
- Top right: "HBS" and "HBS"
- Bottom left: "HBS"
- Bottom right: "HBS"

Enr. Com. Sub. for H. B. 4472] 14

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

Bruce C. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Judd C. Nichols
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Don Touhy
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *approved* this the *29th*
day of *March*, 1988.
Aura A. France Jr.
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 3:22 p.m.

RECEIVED

1500 APR -3 AM 8 50

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE