WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 614

(By Senators Tomblin, Mr. President, and Surosey, and
By Request of the Executive)

PASSED April 4, 2005

In Effect ninety days from Passage
ENROLLED

Senate Bill No. 614

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed April 4, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-24-3 of the Code of West
Virginia, 1931, as amended; and to amend said code by
adding thereto a new section, designated §11-24-6a, all
relating to updating meaning of federal taxable income and
certain other terms used in West Virginia Corporation Net
Income Tax Act; providing new increasing modification to
federal taxable income for amount deducted under Section
199 of Internal Revenue Code; requiring filing of certain
schedules to support deduction and increasing modification;
providing Tax Commissioner with additional remedies for
noncompliance and for errors in computing federal taxable
income; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as
amended, be amended and reenacted; and that said code be
amended by adding thereto a new section, designated §11-24-6a, all to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand three, but prior to the first day of January, two thousand five, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand five, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and
(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand five are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of January, two thousand five, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

§11-24-6a. Additional modification increasing federal taxable income; disallowance of deduction taken under IRC § 199.

(a) General rule. — In addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, there shall be added to federal taxable income the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, and taken as a deduction when determining federal taxable income for the taxable year for federal income tax purposes, unless subsection (b), (d) or (e) of this section applies.

(b) Member of affiliated group filing on separate entity basis in this state. — When the taxpayer is a member of an affiliated group for federal income tax purposes for the taxable year and computation of the deduction allowed under Section 199 of the Internal Revenue Code for the taxable year is determined at the affiliated group level but the taxpayer files on a separate entity basis under this article, then in addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, there shall be added to the taxpayer's pro forma federal taxable income the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, and taken, in whole or in part, as a deduction when determining the taxpayer's
24 pro forma federal taxable income for the taxable year. The taxpayer shall file with its annual return under this article a schedule that shows: (1) The amount of the Section 199 deduction computed for the affiliated group for federal income tax purposes for the taxable year; and (2) how that deduction is allocated among the various members of the affiliated group for purposes of determining each member’s pro forma federal taxable income for the taxable year.

(c) Consolidated federal return consolidated state return. — When the taxpayer elects to file a consolidated return under this article for the taxable year, the general rule stated in subsection (a) of this section shall apply.

(d) Combined state return. — When a combined return is filed under this article for the taxable year, the members of the group filing the combined return shall in addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, add to the combined group’s pro forma federal taxable income for the year, the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, by the appropriate person or persons and taken, in whole or in part, as a deduction when determining pro forma federal taxable income of the combined group for the taxable year. The combined group shall file with its annual return under this article a schedule that shows: (1) The amount of the Section 199 deduction computed by the entity, or each entity that made the computation for federal income tax purposes, and to what entity and to what state it was allocated; (2) how that deduction is allocated for state income tax purposes; (3) how the amount of the Section 199 deduction taken as a deduction when determining the pro forma federal taxable income of the combined group was determined; and (4) such other information as the Tax Commissioner may require.

(e) Taxpayer with flow-through income. — When the taxpayer’s federal taxable income includes a distributive
share of income, gain or loss of a partnership, limited
liability company, electing small business corporation, or
other entity treated as a partnership for federal income tax
purposes, and when the taxpayer's distributive share for
the taxable year includes a deduction, or portion of a
deduction computed under Section 199 of the Internal
Revenue Code, as amended, for the taxable year, then in
addition to amounts added to federal taxable income
pursuant to subsection (b), section six of this article, unless
already included therein, the taxpayer shall add the
amount computed under Section 199 of the Internal
Revenue Code of 1986, as amended, that flows through to
the taxpayer for federal income tax purposes for the
taxable year. The taxpayer shall file with its annual
return filed under this article a copy of all schedules K-1
it received showing allocation of a Section 199 deduction
and such other information as the Tax Commissioner may
require.

(f) *Failure to attach required schedules.* — When the
taxpayer fails to include with the annual return due under
this article the schedule or schedules required by this
section, the return shall be treated as an incomplete return
until the day the required schedule or schedules are filed
with the Tax Commissioner. An incomplete return show-
ing an overpayment of tax may not be treated as a claim
for refund until the day the defect is cured. The filing of
an incomplete return shall not start the running of the
limitations period that would limit the time during which
the Tax Commissioner may issue an assessment or take
other action to enforce compliance with this article for the
taxable year for which the incomplete return is filed.

(g) *Audit adjustment to federal taxable income.* — When
auditing for compliance with this article, the Tax Commis-
sioner may change a taxpayer's computation of federal
taxable income or pro forma taxable income to comply
with the laws of the United States as in effect for the
taxable year and incorporated by reference into this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was approved this the
Day of April

Governor
PRESENTED TO THE GOVERNOR

Date 4/13/85
Time 10:55 a.m.