

FILED

2005 APR 19 P 4: 15

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2005

---

**ENROLLED**

SENATE BILL NO. 614

(By Senator Tomblin, Mr. President, and Sprouse )  
By Request of the Executive)

---

PASSED April 14, 2005

In Effect ninety days from Passage

FILED

2005 APR 19 P 4: 15

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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.**

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

20 (b) The term "Internal Revenue Code of 1986" means the  
21 Internal Revenue Code of the United States enacted by the  
22 federal Tax Reform Act of 1986 and includes the provi-  
23 sions of law formerly known as the Internal Revenue Code  
24 of 1954, as amended, and in effect when the federal Tax  
25 Reform Act of 1986 was enacted that were not amended or  
26 repealed by the federal Tax Reform Act of 1986. Except  
27 when inappropriate, any reference in any law, executive  
28 order or other document:

29 (1) To the Internal Revenue Code of 1954 includes a  
30 reference to the Internal Revenue Code of 1986; and

31 (2) To the Internal Revenue Code of 1986 includes a  
32 reference to the provisions of law formerly known as the  
33 Internal Revenue Code of 1954.

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

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

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

10 (b) *Member of affiliated group filing on separate entity*  
11 *basis in this state.* — When the taxpayer is a member of an  
12 affiliated group for federal income tax purposes for the  
13 taxable year and computation of the deduction allowed  
14 under Section 199 of the Internal Revenue Code for the  
15 taxable year is determined at the affiliated group level but  
16 the taxpayer files on a separate entity basis under this  
17 article, then in addition to amounts added to federal  
18 taxable income pursuant to subsection (b), section six of  
19 this article, unless already included therein, there shall be  
20 added to the taxpayer's pro forma federal taxable income  
21 the amount computed under Section 199 of the Internal  
22 Revenue Code of 1986, as amended, and taken, in whole or  
23 in part, as a deduction when determining the taxpayer's

24 pro forma federal taxable income for the taxable year.  
25 The taxpayer shall file with its annual return under this  
26 article a schedule that shows: (1) The amount of the  
27 Section 199 deduction computed for the affiliated group  
28 for federal income tax purposes for the taxable year; and  
29 (2) how that deduction is allocated among the various  
30 members of the affiliated group for purposes of determin-  
31 ing each member's pro forma federal taxable income for  
32 the taxable year.

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

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

59 (e) *Taxpayer with flow-through income.* — When the  
60 taxpayer's federal taxable income includes a distributive

61 share of income, gain or loss of a partnership, limited  
62 liability company, electing small business corporation, or  
63 other entity treated as a partnership for federal income tax  
64 purposes, and when the taxpayer's distributive share for  
65 the taxable year includes a deduction, or portion of a  
66 deduction computed under Section 199 of the Internal  
67 Revenue Code, as amended, for the taxable year, then in  
68 addition to amounts added to federal taxable income  
69 pursuant to subsection (b), section six of this article, unless  
70 already included therein, the taxpayer shall add the  
71 amount computed under Section 199 of the Internal  
72 Revenue Code of 1986, as amended, that flows through to  
73 the taxpayer for federal income tax purposes for the  
74 taxable year. The taxpayer shall file with its annual  
75 return filed under this article a copy of all schedules K-1  
76 it received showing allocation of a Section 199 deduction  
77 and such other information as the Tax Commissioner may  
78 require.

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

92 (g) *Audit adjustment to federal taxable income.* — When  
93 auditing for compliance with this article, the Tax Commis-  
94 sioner may change a taxpayer's computation of federal  
95 taxable income or pro forma taxable income to comply  
96 with the laws of the United States as in effect for the

97 taxable year and incorporated by reference into this  
98 article.

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

*Candy White*  
.....  
Chairman Senate Committee

*W. Rob Bauer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell G. Adams*  
.....  
Clerk of the Senate

*Bruce M. Orr*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert Skiss*  
.....  
Speaker House of Delegates

The within *is approved* this the *19<sup>th</sup>*  
Day of *April*, 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/13/05

Time 10:55 a