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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2005*

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**ENROLLED**

**SENATE BILL NO.** 623

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

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**PASSED** April 4, 2005

**In Effect** ninety days from **Passage**

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## Senate Bill No. 623

(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 §11-21-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-21-12g, all relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; providing new increasing modification to federal adjusted gross 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 adjusted gross income; and specifying effective dates.

*Be it enacted by the Legislature of West Virginia:*

That §11-21-9 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 §11-21-12g, all to read as follows:

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-9. Meaning of terms.**

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

19 (b) *Medical savings accounts.* — The term “taxable  
20 trust” does not include a medical savings account estab-  
21 lished pursuant to section twenty, article fifteen, chapter  
22 thirty-three of this code or section fifteen, article sixteen  
23 of said chapter. Employer contributions to a medical  
24 savings account established pursuant to said sections are  
25 not “wages” for purposes of withholding under section  
26 seventy-one of this article.

27 (c) *Surtax.* — The term “surtax” means the twenty  
28 percent additional tax imposed on taxable withdrawals  
29 from a medical savings account under section twenty,  
30 article fifteen, chapter thirty-three of this code and the  
31 twenty percent additional tax imposed on taxable with-  
32 draws from a medical savings account under section

33 fifteen, article sixteen of said chapter which are collected  
34 by the Tax Commissioner as tax collected under this  
35 article.

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

43 (e) For purposes of the refundable credit allowed to a  
44 low income senior citizen for property tax paid on his or  
45 her homestead in this state, the term “laws of the United  
46 States” as used in subsection (a) of this section means and  
47 includes the term “low income” as defined in subsection  
48 (b), section twenty-one of this article and as reflected in  
49 the poverty guidelines updated periodically in the federal  
50 register by the U. S. Department of Health and Human  
51 Services under the authority of 42 U. S. C. §9902(2).

**§11-21-12g. Additional modification increasing federal ad-  
justed gross income; disallowance of deduction  
taken under Internal Revenue Code Section  
199.**

1 (a) In addition to amounts added to federal taxable  
2 income pursuant to subsection (b), section twelve of this  
3 article, unless already included therein, there shall be  
4 added to federal taxable income the amount deducted  
5 under Section 199 of the Internal Revenue Code of 1986, as  
6 amended, when determining federal adjusted gross income  
7 for the taxable year for federal income tax purposes.

8 (b) When taxpayer’s federal adjusted gross income  
9 includes distributive share of income, gain or loss of a  
10 partnership, limited liability company, electing small  
11 business corporation, or other entity treated as a partner-  
12 ship for federal income tax purposes, and when taxpayer’s

13 distributive share for the taxable year includes a deduc-  
14 tion, or portion of a deduction computed under Section  
15 199 of the Internal Revenue Code, as amended, for the  
16 taxable year, then in addition to amounts added to federal  
17 taxable income pursuant to subsection (b), section twelve  
18 of this article, unless already included therein, taxpayer  
19 shall add the amount computed under Section 199 of the  
20 Internal Revenue Code of 1986, as amended, that flows  
21 through to the taxpayer for federal income tax purposes  
22 for the taxable year. Taxpayer shall file with its annual  
23 return under this article a copy of all schedules K-1 it  
24 received showing allocation of a Section 199 deduction  
25 and such other information as the Tax Commissioner may  
26 require.

27 (c) *Failure to attach required schedules.* — When  
28 taxpayer fails to include with the annual return due under  
29 this article the schedule or schedules required by this  
30 section, the return shall be treated as an incomplete return  
31 until the day the required schedule or schedules are filed  
32 with the Tax Commissioner. An incomplete return show-  
33 ing an overpayment of tax may not be treated as a claim  
34 for refund until the day the defect is cured. The filing of  
35 an incomplete return shall not start the running of the  
36 period of time during which the Tax Commissioner may  
37 issue an assessment or take other action to enforce compli-  
38 ance of this article for the taxable year.

39 (d) *Audit adjustment to federal taxable income.* — When  
40 auditing for compliance with this article, the Tax Commis-  
41 sioner may change a taxpayer's computation of federal  
42 taxable income or pro forma taxable income to comply  
43 with the laws of the United States as in effect for the  
44 taxable year and incorporated by reference into this  
45 article.

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

*C. Linda White*  
.....  
Chairman Senate Committee

*W. Reed Burr*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Edwards*  
.....  
Clerk of the Senate

*Bryan D. Sw*  
.....  
Clerk of the House of Delegates

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

*Robert Kiss*  
.....  
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