WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 623

(By Senators Tomblin, Mr. President, and Sponaugle,)

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.**

(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 income taxes, unless a different meaning is clearly required. 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 four, 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) *Medical savings accounts.* — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not “wages” for purposes of withholding under section seventy-one of this article.

(c) *Surtax.* — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section
fifteen, article sixteen of said chapter which are collected
by the Tax Commissioner as tax collected under this
article.

(d) **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.

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

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

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

(b) When taxpayer's federal adjusted gross income
includes distributive share of income, gain or loss of a
partnership, limited liability company, electing small
business corporation, or other entity treated as a partner-
ship for federal income tax purposes, and when taxpayer's
13 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 twelve of this article, unless already included therein, 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. Taxpayer shall file with its annual return 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.

(c) Failure to attach required schedules. — When 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 showing 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 period of time during which the Tax Commissioner may issue an assessment or take other action to enforce compliance of this article for the taxable year.

(d) Audit adjustment to federal taxable income. — When auditing for compliance with this article, the Tax Commissioner 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 is approved this the 10th Day of April 2005.

Governor
PRESENTED TO THE
GOVERNOR

Date  4/13/05

Time  10:55 a.m.