ENROLLED

SENATE BILL NO. 643

(By Senator Helmick, et al.)

PASSED April 9, 2005

In Effect 90 days from Passage
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(BY SENATORS HELMICK, PLYMALE AND MINARD)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-21-18 and §11-21-30 of the Code of West Virginia, 1931, as amended, all relating generally to personal income tax; providing that in determining West Virginia taxable income of electing small business trusts, income attributable to S corporation stock held by trust shall be included; authorizing equitable relief when statutory computation of tax for nonresident individuals, estates and trusts and part-year resident individuals produces result that is out of all proportion to amount of taxpayer’s West Virginia source income; correcting erroneous cross-reference to code section concerning part-year residents; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

That §11-21-18 and §11-21-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.
§11-21-18. West Virginia taxable income of resident estate or trust.

The West Virginia taxable income of a resident estate or trust means its federal taxable income for the taxable year as defined in the laws of the United States and section nine of this article for the taxable year, with the following modifications:

(1) There shall be subtracted six hundred dollars as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be added or subtracted, as the case may be, the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen of this article.

(3) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended, to be separately taxed for federal income tax purposes: Provided, That the provisions of this subdivision shall first be effective for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety.

(4) There shall be added by an electing small business trust as defined in Section 1361(e) of the Internal Revenue Code of 1986, as amended, which is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641 of the Internal Revenue Code of 1986, as amended.

(b) The amendments to this section enacted in the regular session of the Legislature in two thousand five are
PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

(a) Computation of tax. – For taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one, the tax due under this article on taxable income derived from sources in this state by a nonresident individual, estate, or trust or by a part-year resident individual shall be calculated as provided in this section.

(1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an individual, estate or trust, were a resident of this state for the entire taxable year. When determining tentative tax liability under this subdivision, a nonresident shall be allowed the same deductions, exemptions and credits that would be allowable if taxpayer were a resident individual, estate or trust, as the case may be, for the entire taxable year, except that no credit shall be allowed under section twenty of this article.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer's “federal adjusted gross income” for the taxable year as defined in section nine of this article: Provided, That if this computation produces a result that is out of all appropriate proportion to the amount of taxpayer's West Virginia source income, the Tax Commissioner may provide such equitable relief as the Tax Commissioner, in his or her discretion, considers to be appropriate under the circumstances.
(b) **Special rules for estates and trusts.** – For purposes of subdivision (1), subsection (a) of this section:

1. The "federal adjusted gross income" of an estate or trust shall be determined as if such estate or trust were an individual; and

2. In the case of a trust, "federal adjusted gross income" shall be its "federal adjusted gross income" for the taxable year increased by the amount of any includable gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to Section 644 of the Internal Revenue Code.

3. When an electing small business trust as defined in Section 1361(e)(1) of the Internal Revenue Code of 1986, as amended, is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641(c) of that code shall be included in West Virginia taxable income of the trust.

(c) **Special rules for part-year residents.** –

1. For purposes of subdivision (1), subsection (a) of this section, the "federal adjusted gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income for the taxable year, as defined in section nine of this article, increased or decreased, as the case may be, by the items accrued under subdivision (1), subsection (b), section forty-four of this article, to the extent such items are not otherwise included in federal adjusted gross income for the taxable year, and decreased or increased, as the case may be by the items accrued under subdivision (2) of said subsection, to the extent such items are included in federal adjusted gross income for the taxable year; and

2. In computing the tax due as if taxpayer were a resident of this state for the entire tax year, West Virginia
adjusted gross income shall include the accruals specified in subdivision (1) of this subsection, with the applicable modifications described in section forty-four of this article.

(d) Definitions. –

(1) “Nonresident estate” means an estate of a decedent who was not a resident of this state at the time of his or her death.

(2) “Nonresident trust” means a trust which is not a resident trust, as defined in section seven of this article.

(3) “Part-year resident individual” means an individual who is not a resident or nonresident of this state for the entire taxable year.

(e) Effective date. –

(1) The provisions of this section shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one. As to taxable years beginning prior to that date, the provisions of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

(2) The amendments to this section enacted in the regular session of the Legislature in two thousand five are effective for tax years beginning on or after the first day of January, two thousand five.
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 ___, 2005.

Governor