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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Committee Substitute for

SENATE BILL NO. 17

(By : (SENATORS CRAIGO, TOMBLIN, MR. PRESIDENT, CHAFIN, JACKSON, WOOTON, BAILEY, WALKER, WAGNER, MANCHIN, ANDERSON, PLYMALE, WHITE, WHITLOW, DITTMAR, BOWMAN, MACNAUGHTAN, MILLER, HELMICK, SHARPE, ROSS, SCHOONOVER, LOVE, BLATNIK, GRUBB, OLIVERIO, WIEDEBUSCH, BUCKALEW, DEEM, KIMBLE, YODER, BOLEY, MINEAR, SCOTT AND DUGAN, *original sponsors*))

PASSED January 23 1996
In Effect From Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 17

(SENATORS CRAIGO, TOMBLIN, MR. PRESIDENT, CHAFIN,
JACKSON, WOOTON, BAILEY, WALKER, WAGNER, MANCHIN,
ANDERSON, PLYMALE, WHITE, WHITLOW, DITTMAR, BOWMAN,
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WIEDEBUSCH, BUCKALEW, DEEM, KIMBLE, YODER, BOLEY,
MINEAR, SCOTT AND DUGAN, *original sponsors*)

[Passed January 23, 1996; in effect from passage.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten; to amend and reenact sections fifty-one and seventy-one of said article; and to amend and reenact section six, article twenty-three of said chapter, all relating generally to reductions in personal income and business franchise taxes; providing a low income exclusion from federal adjusted gross income;

increasing threshold for filing certain income tax returns; making technical corrections; reducing the rate of business franchise tax; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten; that sections fifty-one and seventy-one of said article be amended and reenacted; and that section six, article twenty-three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10. Low income exclusion.

1 (a) *Earned income exclusion.* — In the case of an
2 eligible taxpayer, there shall be allowed as a deduction
3 from federal adjusted gross income the amount of his or
4 her earned income included therein, not to exceed ten
5 thousand dollars, except that when a husband and wife
6 file separate returns under this article, this exclusion
7 shall not exceed five thousand dollars per separate
8 return: *Provided*, That for the taxable year beginning
9 the first day of January, one thousand nine hundred
10 ninety-six, the exclusion provided for in this section
11 shall apply only to earned income received after the
12 thirtieth day of June, one thousand nine hundred ninety-
13 six, and the amount excluded shall not exceed fifty
14 percent of the annual low income exclusion amounts set
15 forth in this subsection.

16 (b) *“Eligible taxpayer” defined.* — The term “eligible
17 taxpayer” means:

18 (1) Any unmarried individual and any husband and
19 wife filing a joint return under this article who has or
20 have federal adjusted gross income of ten thousand
21 dollars or less for the taxable year; or

22 (2) Any husband or wife filing a separate return under
23 this article who has federal adjusted gross income of five

24 thousand dollars or less.

25 (c) *“Earned income” defined.* —

26 (1) The term “earned income” means:

27 (A) Wages, salaries, tips and other employee compensa-
28 tion; plus

29 (B) The amount of the taxpayer’s net earnings from
30 self-employment for the taxable year (within the mean-
31 ing of Section 1402(a) of the Internal Revenue Code), but
32 such net earnings shall be determined with regard to the
33 deduction allowed to the taxpayer under Section 164 of
34 the Internal Revenue Code.

35 (2) For purposes of this section:

36 (A) The earned income of an individual shall be com-
37 puted without regard to any community property laws;

38 (B) No amount received as pension or annuity shall be
39 taken into account; and

40 (C) No amount received for services provided by an
41 individual while the individual is an inmate at a penal
42 institution shall be taken into account.

43 (d) *Taxable year must be full taxable year.* — Except in
44 the case of a taxable year closed by reason of the death
45 of the taxpayer, no credit shall be allowed under this
46 section in the case of a taxable year covering a period of
47 less than twelve months.

§11-21-51. Returns and liabilities.

1 (a) *General.* — On or before the fifteenth day of the
2 fourth month following the close of a taxable year, an
3 income tax return under this article shall be made and
4 filed by or for:

5 (1) Every resident individual required to file a federal
6 income tax return for the taxable year, or having West
7 Virginia adjusted gross income for the taxable year,
8 determined under section twelve of this article in excess
9 of the sum of his or her West Virginia personal exemp-

10 tions: *Provided*, That the tax commissioner shall by
11 legislative rule specify circumstances when an individual
12 is not required to file a return as a result of the applica-
13 tion of section ten of this article;

14 (2) Every resident estate or trust required to file a
15 federal income tax return for the taxable year, or having
16 any West Virginia taxable income for the taxable year,
17 determined under section eighteen;

18 (3) Every nonresident individual having any West
19 Virginia adjusted gross income for the taxable year,
20 determined under section thirty-two of this article, in
21 excess of the sum of his or her West Virginia personal
22 exemptions, except when all of such nonresident individ-
23 ual's West Virginia source income is taxed on a compos-
24 ite return filed under this article for the taxable year;
25 and

26 (4) Every nonresident estate or trust having items of
27 income or gain derived from West Virginia sources,
28 determined in accordance with the applicable rules of
29 section thirty-two as in the case of a nonresident indi-
30 vidual, in excess of its West Virginia exemption.

31 (b) *Husband and wife.* —

32 (1) If the federal income tax liability of husband or
33 wife is determined on a separate federal income tax
34 return, their West Virginia income tax liabilities and
35 returns shall be separate.

36 (2) If the federal income tax liabilities of husband and
37 wife other than a husband and wife described in subdivi-
38 sion (3) of this subsection are determined on a joint
39 federal return, or if neither files a federal return:

40 (A) They shall file a joint West Virginia income tax
41 return, and their tax liabilities shall be joint and several;
42 or

43 (B) They may elect to file separate West Virginia
44 income tax returns on a single or separate form, as may
45 be required by the tax commissioner, if they comply with

46 the requirements of the tax commissioner in setting forth
47 information, and in such event their tax liabilities shall
48 be separate.

49 (3) If either husband and wife is a resident and the
50 other is a nonresident, they shall file separate West
51 Virginia income tax returns on such single or separate
52 forms as may be required by the tax commissioner, and
53 in such event their tax liabilities shall be separate.

54 (c) *Decedents.* — The return of any deceased individual
55 shall be made and filed by his or her executor, adminis-
56 trator or other person charged with his or her property.

57 (d) *Individuals under a disability.* — The return for an
58 individual who is unable to make a return by reason of
59 minority or other disability shall be made and filed by
60 his or her guardian, committee, fiduciary or other person
61 charged with the care of his or her person or property
62 (other than a receiver in possession of only a part of his
63 or her property), by his or her duly authorized agent.

64 (e) *Estates and trusts.* — The return for an estate or
65 trust shall be made and filed by the fiduciary.

66 (f) *Joint fiduciaries.* — If two or more fiduciaries are
67 acting jointly, the return may be made by any one of
68 them.

69 (g) *Tax a debt.* — Any tax under this article, and any
70 increase, interest or penalty thereon, shall, from the time
71 it is due and payable, be a personal debt of the person
72 liable to pay the same, to the state of West Virginia.

73 (h) *Cross reference.* — For provisions as to information
74 returns by partnerships, employers and other persons,
75 see section fifty-eight of this article. For provisions as to
76 composite returns of nonresidents, see section fifty-one-
77 a of this article. For provisions as to information returns
78 by electing small business corporations, see section
79 thirteen-b, article twenty-four of this chapter.

80 (i) *Effective date.* — This section, as amended by this

81 act in the year one thousand nine hundred ninety-six,
82 shall apply to all taxable years beginning after the
83 thirty-first day of December, one thousand nine hundred
84 ninety-five.

§11-21-71. Requirement of withholding tax from wages.

1 (a) *General.* — Every employer maintaining an office or
2 transacting business within this state and making
3 payment of any wage taxable under this article to a
4 resident or nonresident individual shall deduct and
5 withhold from such wages for each payroll period a tax
6 computed in such manner as to result, so far as practica-
7 ble, in withholding from the employee's wages during
8 each calendar year an amount substantially equivalent
9 to the tax reasonably estimated to be due under this
10 article resulting from the inclusion in the employee's
11 West Virginia adjusted gross income of wages received
12 during such calendar year. The method of determining
13 the amount to be withheld shall be prescribed by the tax
14 commissioner, with due regard to the West Virginia
15 withholding exemption of the employee and any low
16 income exclusion allowed to such employee under
17 section eight of this article and asserted in good faith by
18 the employee. This section shall not apply to payments
19 by the United States for service in the armed forces of
20 the United States: *Provided*, That the tax commissioner
21 may execute an agreement with the secretary of the
22 treasury, as provided in 5 U.S.C. §5517, for the manda-
23 tory withholding of tax under this section on pay to
24 members of the national guard while participating in
25 exercises or performing duty under 32 U.S.C. §502, and
26 on pay to members of the ready reserve while participat-
27 ing in scheduled drills or training periods or serving on
28 active duty for training under 10 U.S.C. §270(a).

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29 (b) *Withholding exemptions.* — For purposes of this
30 section:

31 (1) An employee shall be entitled to the same number
32 of West Virginia withholding exemptions as the number
33 of withholding exemptions to which he or she is entitled

34 for federal income tax withholding purposes. An em-
35 ployer may rely upon the number of federal withholding
36 exemptions claimed by the employee, except where the
37 employee claims a higher number of West Virginia
38 withholding exemptions.

39 (2) With respect to any taxable year beginning after the
40 thirty-first day of December, one thousand nine hundred
41 eighty-six, the amount of each West Virginia exemption
42 shall be two thousand dollars whether the individual is
43 a resident or nonresident.

44 (c) *Exception for certain nonresidents.* — If the income
45 tax law of another state of the United States or of the
46 District of Columbia results in its residents being
47 allowed a credit under section forty sufficient to offset
48 all taxes required by this article to be withheld from
49 wages of an employee, the tax commissioner may by
50 regulation relieve the employers of such employees from
51 withholding requirements of this article with respect to
52 such employees.

53 (d) *Effective date.* — The provisions of this section, as
54 amended in the year one thousand nine hundred ninety-
55 six, shall apply to all taxable years or portions thereof
56 beginning after the thirtieth day of June, one thousand
57 nine hundred ninety-six.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

1 (a) *General.* — An annual business franchise tax is
2 hereby imposed on the privilege of doing business in this
3 state and in respect of the benefits and protection
4 conferred. Such tax shall be collected from every
5 domestic corporation, every corporation having its
6 commercial domicile in this state, every foreign or
7 domestic corporation owning or leasing real or tangible
8 personal property located in this state or doing business
9 in this state and from every partnership owning or
10 leasing real or tangible personal property located in this
11 state or doing business in this state, effective on and

12 after the first day of July, one thousand nine hundred
13 eighty-seven.

14 (b) *Amount of tax and rate; effective date.* —

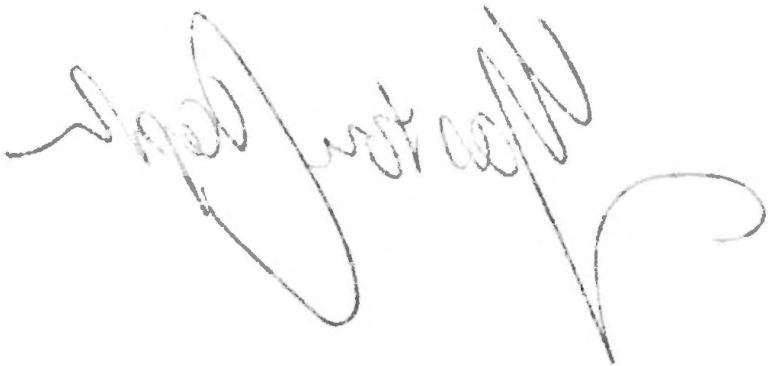
15 (1) On and after the first day of July, one thousand nine
16 hundred eighty-seven, the amount of tax shall be the
17 greater of fifty dollars or fifty-five one hundredths of
18 one percent of the value of the tax base, as determined
19 under this article: *Provided*, That when the taxpayer's
20 first taxable year under this article is a short taxable
21 year, the taxpayer's liability shall be prorated based
22 upon the ratio which the number of months in which
23 such short taxable year bears to twelve: *Provided*,
24 *however*, That this subdivision shall not apply to taxable
25 years beginning on or after the first day of January, one
26 thousand nine hundred eighty-nine.

27 (2) *Taxable years after December 31, 1988.* — For
28 taxable years beginning on or after the first day of
29 January, one thousand nine hundred eighty-nine, the
30 amount of tax due under this article shall be the greater
31 of fifty dollars or seventy-five one hundredths of one
32 percent of the value of the tax base as determined under
33 this article.

34 (3) *Taxable years after June 30, 1997.* — For taxable
35 years beginning on or after the first day of July, one
36 thousand nine hundred ninety-seven, the amount of tax
37 due under this article shall be the greater of fifty dollars
38 or seventy hundredths of one percent of the value of the
39 tax base as determined under this article.

40 (c) *Short taxable years.* — When the taxpayer's taxable
41 year for federal income tax purposes is a short taxable
42 year, the tax determined by application of the tax rate to
43 the taxpayer's tax base shall be prorated based upon the
44 ratio which the number of months in such short taxable
45 year bears to twelve: *Provided*, That when the tax-
46 payer's first taxable year under this article is less than
47 twelve months, the taxpayer's liability shall be prorated
48 based upon the ratio which the number of months the

49 taxpayer was doing business in this state bears to twelve
50 but in no event shall the tax due be less than fifty
51 dollars.

A large, stylized handwritten signature in black ink, likely belonging to a legislator or official, is written across the lower portion of the page. The signature is highly cursive and difficult to decipher.

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

Paul Schonover
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Pursell Stokes
.....
Clerk of the Senate

Bryan D. Ryan
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

Earl C. Coker
.....
Speaker House of Delegates

The within *is approved* this the *26th*
January
day of, 1996.

Wesley Kessler
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 1/23/96

Time 3:05