

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2807

BY DELEGATES J. KELLY, NELSON, WORRELL, D. KELLY,
AZINGER, CRISS, CAPUTO, ANGELUCCI, LONGSTRETH, N.

BROWN AND ESPINOSA

[Passed March 9, 2019; in effect ninety days from
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-21-12j; and to amend and reenact §11-21-17a of said code, all relating to
3 creating an additional modification to the West Virginia adjusted gross income of
4 shareholders of S corporations or members of a limited liability company engaged in
5 business as a financial organization in this state, similar to the modification that presently
6 exists in the code for financial organizations organized as C corporations; setting forth
7 apportionment rules for certain financial organizations; specifying special gross receipts
8 factor; and providing for retroactive effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

**§11-21-12j. Additional modification reducing federal adjusted gross income for
shareholders of S corporations and members of limited liability companies engaged
in banking business.**

1 (a) For taxable years beginning on and after January 1, 2018, the West Virginia adjusted
2 gross income of a taxpayer who is a shareholder of an S corporation or a member of a limited
3 liability company engaged in business as a financial organization as defined in §11-24-3a(a)(14)
4 of this code, as adjusted pursuant to §11-21-12 of this code, shall be further adjusted by
5 multiplying that portion of the taxpayer's West Virginia adjusted gross income attributable to the
6 taxpayer's proportional share of all items of income, loss, deduction or credit of the S corporation
7 or limited liability company, as shown on the K-1 received by the taxpayer for the tax year, by a
8 fraction equal to one minus a fraction:

9 (1) The numerator of which is the sum of the average of the monthly beginning and ending
10 account balances of the S corporation or limited liability company during the taxable year (account
11 balances to be determined at cost in the same manner that obligations, investments and loans
12 are reported on Schedule L of Federal Form 1120S) of the following:

13 (A) Obligations or securities of the United States, or of any agency, authority, commission
14 or instrumentality of the United States and any other corporation or entity created under the
15 authority of the United States Congress for the purpose of implementing or furthering an objective
16 of national policy;

17 (B) Obligations or securities of this state and any political subdivision or authority of the
18 state;

19 (C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential
20 property located in this state and occupied by nontransients; and

21 (D) Loans primarily secured by a lien or security agreement on residential property in the
22 form of a mobile home, modular home or double-wide located in this state and occupied by
23 nontransients.

24 (2) The denominator of which is the average of the monthly beginning and ending account
25 balances of the total assets of the S corporation or limited liability company which are shown on
26 Schedule L of Federal Form 1120S, which are filed by the S corporation or limited liability
27 company with the Internal Revenue Service: *Provided*, That the adjustment allowed herein shall
28 not be made to the extent that the adjustments provided for in this section are otherwise allowed
29 by §11-21-12 of this code and shall not be made to adjusted gross income of a taxpayer who is a
30 shareholder of an S corporation or a member of a limited liability company engaged in banking
31 business if the income of the S corporation or limited liability company of which the taxpayer is a
32 shareholder or member has been adjusted at the S corporation or limited liability company level
33 for the tax year.

34 (b) *Apportionment rules for organizations engaged in business both within and without this*
35 *state.* — For taxable years beginning on and after January 1, 2018, an S corporation or a limited
36 liability company engaged in business as a financial organization as defined in §11-24-3a(a)(14)
37 of this code, which regularly engages in business both within and without this state shall apportion
38 the business income component of its federal taxable income, after adjustment as provided in

39 §11-21-12j(a) of this code, by multiplying the amount thereof by the special gross receipts factor
40 determined as provided in subsection (c) of this section.

41 (c) *Special gross receipts factor.* — The gross receipts factor is a fraction, the numerator
42 of which is the total gross receipts of the S corporation or limited liability company engaged in
43 business as a financial organization as defined in §11-24-3a(a)(14) of this code from sources
44 within this state during the taxable year and the denominator of which is the total gross receipts
45 of the S corporation or limited liability company engaged in business as a financial organization
46 as defined in §11-21-12j(a) of this code wherever earned during the taxable year: *Provided*, That
47 neither the numerator nor the denominator of the gross receipts factor shall include receipts from
48 obligations described in §11-24-6(f)(1)(A), (B), (C) and (D) of this code.

49 (d) *Effective date.* — The provisions of this section are retroactive with respect to tax years
50 beginning on or after January 1, 2018, the law in effect for each of those years is fully preserved
51 as to those years, except as provided in this section.

§11-21-17a. Resident shareholders of S corporations.

1 (a) *S corporation shareholder's modifications.* — In determining West Virginia adjusted
2 gross income and West Virginia taxable income of a resident S corporation shareholder, any
3 modification described in §11-21-12(b), §11-21-12(c), §11-21-12(d), or §11-21-12j of this code,
4 which relates to an item of income, gain, loss or deduction shall be made in accordance with the
5 S corporation shareholder's pro rata share, for federal income tax purposes, of the items to which
6 the modifications relate. Where a shareholder's pro rata share of any such item is not required to
7 be taken into account separately for federal income tax purposes, the shareholder's pro rata share
8 of such item shall be his or her pro rata share for federal income tax purposes of S corporation
9 taxable income or loss generally.

10 (b) *Character of items.* — Each item of S corporation income, gain, loss or deduction shall
11 have the same character for a shareholder under this article as for federal income tax purposes.
12 Where an item is not characterized for federal income tax purposes, it shall have the same

- 13 character for a shareholder as if realized directly from the source from which realized by the S
14 corporation, or incurred in the same manner as incurred by the S corporation.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor