

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2807

FISCAL
NOTE

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

BROWN AND ESPINOSA

[Introduced February 1, 2019; Referred
to the Committee on Banking and Insurance then
Finance.]

1 A BILL 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 engaged in banking business in this state, similar to the
 5 modification that presently exists in the code for banks organized as C corporations.

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 engaged in banking business.**

1 (a) For taxable years beginning on and after January 1, 2019, the West Virginia adjusted
 2 gross income of a shareholder of an S corporation engaged in banking business as defined in
 3 §31A-1-2(e) of this code, as adjusted pursuant to §11-21-12 of this code, shall be further adjusted
 4 by multiplying that portion of shareholder’s West Virginia adjusted gross income attributable to
 5 the shareholder’s proportional share of all items of income, loss, deduction or credit of the S
 6 corporation, as shown on the K-1 received by the shareholder for the tax year, by a fraction equal
 7 to one minus a fraction:

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

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

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

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

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

23 (2) The denominator of which is the average of the monthly beginning and ending account
24 balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form
25 1120S, which are filed by the taxpayer with the Internal Revenue Service: *Provided*, That the
26 adjustment allowed herein shall not be made to the extent that the adjustments provided for in
27 this section are otherwise allowed by §11-21-12 of this code.

28 (b) *Effective date.*—The provisions of this section are retroactive with respect to tax years
29 beginning on or after January 1, 2019, the law in effect for each of those years is fully preserved
30 as to those year, except as provided in §11-21-12j of this code.

§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 §11-21-12b, §11-21-12c, ~~or~~ §11-21-12d, 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.

NOTE: The purpose of this bill is to provide a reducing modification to the West Virginia adjusted gross income of a shareholder of a Subchapter S corporation engaged in banking business in this state and making the modification retroactive with respect to tax years beginning on or after January 1, 2019.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.