

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2005

ENROLLED

SENATE BILL NO. 643

(By Senator Helmick, et al)

PASSED April 9, 2005

In Effect 90 days from **Passage**

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Senate Bill No. 643

(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.

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

6 (1) There shall be subtracted six hundred dollars as the
7 West Virginia personal exemption of the estate or trust,
8 and there shall be added the amount of its federal deduc-
9 tion for a personal exemption.

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

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

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

31 (b) The amendments to this section enacted in the
32 regular session of the Legislature in two thousand five are

33 effective for tax years beginning on or after the first day of
34 January, two thousand five.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

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

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

8 (1) Taxpayer shall first calculate tax liability under this
9 article as if taxpayer, whether an individual, estate or
10 trust, were a resident of this state for the entire taxable
11 year. When determining tentative tax liability under this
12 subdivision, a nonresident shall be allowed the same
13 deductions, exemptions and credits that would be allow-
14 able if taxpayer were a resident individual, estate or trust,
15 as the case may be, for the entire taxable year, except that
16 no credit shall be allowed under section twenty of this
17 article.

18 (2) The amount of tentative tax determined under
19 subdivision (1) of this subsection shall then be multiplied
20 by a fraction the numerator of which is the taxpayer's
21 West Virginia source income, determined in accordance
22 with Part III of this article for the taxable year, and the
23 denominator of which is such taxpayer's "federal adjusted
24 gross income" for the taxable year as defined in section
25 nine of this article: *Provided*, That if this computation
26 produces a result that is out of all appropriate proportion
27 to the amount of taxpayer's West Virginia source income,
28 the Tax Commissioner may provide such equitable relief
29 as the Tax Commissioner, in his or her discretion, consid-
30 ers to be appropriate under the circumstances.

31 (b) *Special rules for estates and trusts.* – For purposes of
32 subdivision (1), subsection (a) of this section:

33 (1) The “federal adjusted gross income” of an estate or
34 trust shall be determined as if such estate or trust were an
35 individual; and

36 (2) In the case of a trust, “federal adjusted gross income”
37 shall be its “federal adjusted gross income” for the taxable
38 year increased by the amount of any includable gain,
39 reduced by any deductions properly allocable thereto,
40 upon which the tax is imposed for the taxable year pursu-
41 ant to Section 644 of the Internal Revenue Code.

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

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

52 (1) For purposes of subdivision (1), subsection (a) of this
53 section, the “federal adjusted gross income” of a part-year
54 resident individual shall be taxpayer’s federal adjusted
55 gross income for the taxable year, as defined in section
56 nine of this article, increased or decreased, as the case may
57 be, by the items accrued under subdivision (1), subsection
58 (b), section forty-four of this article, to the extent such
59 items are not otherwise included in federal adjusted gross
60 income for the taxable year, and decreased or increased, as
61 the case may be by the items accrued under subdivision (2)
62 of said subsection, to the extent such items are included in
63 federal adjusted gross income for the taxable year; and

64 (2) In computing the tax due as if taxpayer were a
65 resident of this state for the entire tax year, West Virginia

66 adjusted gross income shall include the accruals specified
67 in subdivision (1) of this subsection, with the applicable
68 modifications described in section forty-four of this
69 article.

70 (d) *Definitions.* –

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

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

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

79 (e) *Effective date.* –

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

86 (2) The amendments to this section enacted in the regular
87 session of the Legislature in two thousand five are effec-
88 tive for tax years beginning on or after the first day of
89 January, two thousand five.

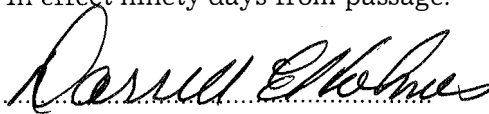
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee



.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

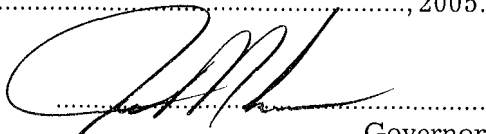

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is appended this the 2nd
Day of May, 2005.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:45 hr