

1 **H. B. 4586**

2
3 (By Delegates Young, Barrett, Lawrence,
4 Skinner, Fragale, Sponaugle, Kinsey,
5 Ferro and Barker)

6 [Introduced February 17, 2014; referred to the
7 Committee on Finance.]

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10 A BILL to amend and reenact §11-24-6 of the Code of West Virginia,
11 1931, as amended, relating to adding the taxable income or
12 loss of any corporation that is a member of a unitary group
13 and that is incorporated in certain jurisdictions to federal
14 taxable income for purposes of determining state taxable
15 income.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §11-24-6 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 24. CORPORATION NET INCOME TAX.**

20 **§11-24-6. Adjustments in determining West Virginia taxable income.**

21 (a) *General.* -- In determining West Virginia taxable income of
22 a corporation, its taxable income as defined for federal income tax
23 purposes shall be adjusted and determined before the apportionment
24 provided by section seven of this article, by the items specified

1 in this section.

2 (b) *Adjustments increasing federal taxable income.* -- There
3 shall be added to federal taxable income, unless already included
4 in the computation of federal taxable income, the following items:

5 (1) Interest or dividends on obligations or securities of any
6 state or of a political subdivision or authority of the state;

7 (2) Interest or dividends, less related expenses to the extent
8 not deducted in determining federal taxable income, on obligations
9 or securities of any authority, commission or instrumentality of
10 the United States which the laws of the United States exempt from
11 federal income tax but not from state income taxes;

12 (3) Income taxes and other taxes, including franchise and
13 excise taxes, which are based on, measured by, or computed with
14 reference to net income, imposed by this state or any other taxing
15 jurisdiction, to the extent deducted in determining federal taxable
16 income;

17 (4) The amount of unrelated business taxable income as defined
18 by Section 512 of the Internal Revenue Code of 1986, as amended, of
19 a corporation which by reason of its purposes is generally exempt
20 from federal income taxes;

21 (5) The taxable income or loss of any corporation that is a
22 member of a unitary group and that is incorporated in any of the
23 following jurisdictions shall be added to federal consolidated
24 taxable income: Andorra, Anguilla, Antigua and Barbuda, Aruba, the

1 Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin
2 Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica,
3 Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man,
4 Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall
5 Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands
6 Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis,
7 St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos
8 Islands, the U.S. Virgin Islands and Vanuatu.

9 ~~(5)~~(6) The amount of any net operating loss deduction taken
10 for federal income tax purposes under Section 172 of the Internal
11 Revenue Code of 1986, as amended;

12 ~~(6)~~(7) Any amount included in federal taxable income which is
13 a net operating loss from sources without the United States after
14 making the decreasing adjustments provided in subdivisions (5) and
15 (7), subsection (c) of this section for Section 951 income and
16 Section 78 income. Federal taxable income from sources without the
17 United States shall be determined in accordance with the provisions
18 of Sections 861, 862 and 863 of the Internal Revenue Code of 1986,
19 as amended; and

20 ~~(7)~~(8) The amount of foreign taxes deducted in determining
21 federal taxable income.

22 (c) *Adjustments decreasing federal taxable income.* -- There
23 shall be subtracted from federal taxable income to the extent
24 included therein:

1 (1) Any gain from the sale or other disposition of property
2 having a higher fair market value on July 1, 1967, than the
3 adjusted basis at said date for federal income tax purposes:
4 *Provided*, That the amount of this adjustment is limited to that
5 portion of any gain which does not exceed the difference between
6 the fair market value and the adjusted basis: *Provided, however*,
7 That for tax years beginning after December 31, 2008, no amount of
8 gain from the sale or other disposition of property having a higher
9 fair market value on July 1, 1967, than the adjusted basis at said
10 date for federal income tax purposes may be subtracted from federal
11 taxable income to the extent included therein;

12 (2) The amount of any refund or credit for overpayment of
13 income taxes and other taxes, including franchise and excise taxes,
14 which are based on, measured by, or computed with reference to net
15 income, imposed by this state or any other taxing jurisdiction, to
16 the extent properly included in gross income for federal income tax
17 purposes;

18 (3) The amount added to federal taxable income due to the
19 elimination of the reserve method for computation of the bad debt
20 deduction;

21 (4) The full amount of interest expense actually disallowed in
22 determining federal taxable income which was incurred or continued
23 to purchase or carry obligations or securities of any state or of
24 any political subdivision of the state;

1 (5) The amount required to be added to federal taxable income
2 as a dividend received from a foreign (nonUnited States)
3 corporation under Section 78 of the Internal Revenue Code of 1986,
4 as amended, by a corporation electing to take the foreign tax
5 credit for federal income tax purposes;

6 (6) The amount of salary expenses disallowed as a deduction
7 for federal income tax purposes due to claiming the federal jobs
8 credit under Section 51 of the Internal Revenue Code of 1986, as
9 amended;

10 (7) The amount included in federal adjusted gross income by
11 the operation of Section 951 of the Internal Revenue Code of 1986,
12 as amended;

13 (8) Employer contributions to medical savings accounts
14 established pursuant to section fifteen, article sixteen, chapter
15 thirty-three of this code to the extent included in federal
16 adjusted gross income for federal income tax purposes less any
17 portion of employer contributions withdrawn for purposes other than
18 payment of medical expenses: *Provided*, That the amount subtracted
19 pursuant to this subsection for any one taxable year may not exceed
20 the maximum amount that would have been deductible from the
21 corporation's federal adjusted gross income for federal income tax
22 purposes if the aggregate amount of the corporation's contributions
23 to individual medical savings accounts established under section
24 fifteen, article sixteen, chapter thirty-three of this code had

1 been contributed to a qualified plan as defined under the Employee
2 Retirement Income Security Act of 1974, as amended; and

3 (9) Any amount included in federal taxable income which is
4 foreign source income. Foreign source income is any amount
5 included in federal taxable income which is taxable income from
6 sources without the United States, less the adjustments provided in
7 subdivisions (5) and (7) of this subsection.

8 In determining "foreign source income", the provisions of
9 Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as
10 amended, shall be applied.

11 (d) *Net operating loss deduction.* -- Except as otherwise
12 provided in this subsection, there is allowed as a deduction for
13 the taxable year an amount equal to the aggregate of: (1) The West
14 Virginia net operating loss carryovers to that year; plus (2) the
15 net operating loss carrybacks to that year: *Provided,* That no more
16 than \$300,000 of net operating loss from any taxable year beginning
17 after December 31, 1992, may be carried back to any previous
18 taxable year. For purposes of this subsection, the term "West
19 Virginia net operating loss deduction" means the deduction allowed
20 by this subsection, determined in accordance with Section 172 of
21 the Internal Revenue Code of 1986, as amended.

22 (1) *Special rules.* --

23 (A) When the corporation further adjusts its adjusted federal
24 taxable income under section seven of this article, the West

1 Virginia net operating loss deduction allowed by this subsection
2 shall be deducted after the section seven adjustments are made;

3 (B) The Tax Commissioner shall prescribe the transition
4 regulations as he or she deems necessary for fair and equitable
5 administration of this subsection as amended by this act.

6 (2) *Effective date.* -- The provisions of this subsection, as
7 amended by chapter one hundred nineteen, Acts of the Legislature,
8 1988, apply to all taxable years ending after June 30, 1988; and to
9 all loss carryovers from taxable years ending on or before said
10 June 30.

11 (e) *Special adjustments for expenditures for water and air*
12 *pollution control facilities.* --

13 (1) If the taxpayer so elects under subdivision (2) of this
14 subsection, there shall be:

15 (A) Subtracted from federal taxable income the total of the
16 amounts paid or incurred during the taxable year for the
17 acquisition, construction or development within this state of water
18 pollution control facilities or air pollution control facilities as
19 defined in Section 169 of the Internal Revenue Code of 1986, as
20 amended; and

21 (B) Added to federal taxable income the total of the amounts
22 of any allowances for depreciation and amortization of the water
23 pollution control facilities or air pollution control facilities,
24 as so defined, to the extent deductible in determining federal

1 taxable income.

2 (2) The election referred to in subdivision (1) of this
3 subsection shall be made in the return filed within the time
4 prescribed by law, including extensions of the time, for the
5 taxable year in which the amounts were paid or incurred. The
6 election shall be made in that manner, and the scope of application
7 of that election shall be defined, as the Tax Commissioner may by
8 rule prescribe, and shall be irrevocable when made as to all
9 amounts paid or incurred for any particular water pollution control
10 facility or air pollution control facility.

11 (3) Notwithstanding any other provisions of this subsection or
12 of section seven of this article to the contrary, if the taxpayer's
13 federal taxable income is subject to allocation and apportionment
14 under said section, the adjustments prescribed in paragraphs (A)
15 and (B), subdivision (1) of this subsection shall, instead of being
16 made to the taxpayer's federal taxable income before allocation and
17 apportionment thereof as provided in section seven of this article,
18 be made to the portion of the taxpayer's net income, computed
19 without regard to the adjustments, allocated and apportioned to
20 this state in accordance with said section.

21 (f) *Allowance for certain government obligations and*
22 *obligations secured by residential property.* -- The West Virginia
23 taxable income of a taxpayer subject to this article as adjusted in
24 accordance with subsections (b), (c) and (e) of this section shall

1 be further adjusted by multiplying the taxable income after the
2 adjustment by said subsections by a fraction equal to one minus a
3 fraction:

4 (1) The numerator of which is the sum of the average of the
5 monthly beginning and ending account balances during the taxable
6 year (account balances to be determined at cost in the same manner
7 that obligations, investments and loans are reported on Schedule L
8 of the Federal Form 1120) of the following:

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

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

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

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

22 (2) The denominator of which is the average of the monthly
23 beginning and ending account balances of the total assets of the
24 taxpayer which are shown on Schedule L of Federal Form 1120, which

1 are filed by the taxpayer with the Internal Revenue Service.

2 (g) The amendments to the provisions of this section made
3 during the 1998 regular session of the Legislature apply to all
4 taxable years beginning on or after December 31, 1997.

5 (h) The Tax Commissioner shall propose emergency and
6 legislative rules under article three, chapter twenty-nine-a of
7 this code:

8 (1) To determine the computation of income or loss for a
9 corporation that is a member of a unitary group and that is not
10 otherwise required to file a consolidated federal return;

11 (2) To prevent double taxation or double deduction of any
12 amount included in the computation of income under this section;

13 (3) To apply the rules of apportionment to those corporations
14 described in subdivision (5), subsection (b) of this section; and

15 (4) To otherwise provide for the administration of the
16 amendments to this section enacted in 2014.

17 (i) On or before December 1, 2014, the Tax Commissioner shall
18 report to the Joint Committee on Government and Finance on the use
19 of out-of-state tax shelters. The Tax Commissioner shall use all
20 data available to the Department of Revenue to prepare the report,
21 which shall:

22 (1) Describe methods by which taxpayers shift income otherwise
23 taxable by this state to outside the state; and

24 (2) Make recommendations for addressing noncompliance

1 attributable to out-of-state tax shelters.

2 (j) On or before January 1 of each odd-numbered year, the Tax
3 Commissioner shall submit a report to the Joint Committee on
4 Government and Finance of recommendations for legislation related
5 to the jurisdictions listed in subdivision (5), subsection (b) of
6 this section, including recommendations for additions to or
7 subtractions from the list of those jurisdictions.

8 (k) The amendments to the provisions of this section made in
9 2014 apply to all taxable years beginning on or after December 31,
10 2014.

NOTE: The purpose of the bill is to add the taxable income or loss of any corporation that is a member of a unitary group and that is incorporated in certain jurisdictions considered to be tax havens to federal taxable income for purposes of determining state taxable income.

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