

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3286

By Delegate Criss

[Introduced February 3, 2023; Referred
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-24-6c, relating to an additional modification decreasing federal taxable
3 income; providing for definitions; and providing for net liability under apportionment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6c. Additional modification decreasing federal taxable income; net liability under apportionment.

1 In addition to the adjustments to federal taxable income under section six of this article, the
2 amounts under this section are subtracted from the federal taxable income of a corporation
3 determined before the apportionment provided by section seven of this article in determining West
4 Virginia taxable income.

5 (a) For purposes of this section, "net deferred tax liability" means deferred tax liabilities that
6 exceed the deferred tax assets of the taxpayer, as computed in accordance with generally
7 accepted accounting principles, and "net deferred tax asset" means that deferred tax assets
8 exceed the deferred tax liabilities of the taxpayer, as computed in accordance with generally
9 accepted accounting principles.

10 (b) Only publicly traded companies, including affiliated corporations participating in the
11 filing of a publicly traded company's financial statements prepared in accordance with generally
12 accepted accounting principles, as of the effective date of this section, shall be eligible for this
13 subtraction.

14 (c) If the application of (1) The Proviso contained in subsection (e) of section seven of this
15 article; (2) Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and
16 (3) Subdivision (13) of subsection (e) of section seven of this article results in an aggregate
17 increase to the taxpayer's net deferred tax liability or an aggregate decrease to the taxpayer's net
18 deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax
19 liability, the taxpayer shall be entitled to a subtraction, as determined in this section.

20 (d) For the 10-year period beginning with the taxpayer's taxable year that begins on or after
21 January 1, 2028, a taxpayer shall be entitled to a subtraction in computing West Virginia taxable
22 income equal to one tenth of the amount necessary to offset the increase in the net deferred tax
23 liability or decrease in the net deferred tax asset, or the aggregate net change thereof, from a net
24 deferred tax asset to a net deferred tax liability, as described in subsection (c) of this section, as
25 computed in accordance with generally accepted accounting principles, that resulted from the
26 application of (1) The Proviso contained in subsection (e) of section seven of this article; (2)
27 Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and (3)
28 Subdivision (13) of subsection (e) of section seven of this article, but for the subtraction provided
29 under this section.

30 (e) The subtraction calculated under this section shall not be reduced as a result of any
31 events subsequent to such calculation including, but not limited to, any disposition or
32 abandonment of assets. Such subtraction shall be calculated without regard to the federal tax
33 effect and shall not alter the tax basis of any asset. If the subtraction under this section is greater
34 than taxpayer's federal taxable income as adjusted by section six of this article, any excess
35 subtraction shall be carried forward and applied as a subtraction to taxpayer's federal taxable
36 income in determining taxpayer's West Virginia taxable income in future tax years until fully
37 utilized.

38 (f) Any taxpayer intending to claim a subtraction under this section shall file a statement
39 with the Tax Commissioner on or before July 1, 2024, specifying the total amount of the subtraction
40 which the taxpayer claims. The statement shall be made on such form and in such manner as
41 prescribed by the commissioner and shall contain such information or calculations as the
42 commissioner may specify. No subtraction shall be allowed under this section for any taxable year
43 except to the extent claimed in accordance with this subsection, in the manner prescribed by the
44 commissioner. Nothing in this subsection shall limit the authority of the commissioner to review or

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- 45 re-determine the proper amount of any subtraction claimed, whether on the statement required
46 under this subsection or on a tax return for any taxable year.

NOTE: The purpose of this bill is to provide for an additional modification decreasing federal taxable income. The bill provides for certain definitions. Finally, the bill provides for net liability under apportionment.

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