WEST VIRGINIA CODE CHAPTER 11 ARTICLE 12C

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§11-12C-1. Definitions.

As used in this article:

(1) "Business activity" means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in subsections (b), (c) and (d), section forty-nine, article one, chapter thirty-one of this code.

(2) "Corporate license tax" or "license tax" or "tax" means, in addition to the amount of corporate license tax levied pursuant to this article, all interest, additions to tax, fines and penalties, unless the intention to give the term a more limited meaning is clear from the context in which it is used.

(3) "Delegate" in the phrase "or his delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated thereunder.

(4) "Domestic corporation" means a corporation incorporated under the laws of this state and corporations organized under the laws of the state of Virginia before June 20, 1863, which have its principal place of business and chief works (if it has chief works) in this state. Every other corporation is a foreign corporation.

(5) "Foreign corporation" means a corporation which is not a domestic corporation.

(6) "Nonprofit corporation" means a nonprofit corporation as defined by section six, article one, chapter thirty-one of this code.

(7) "Tax commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

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§11-12C-2. Corporate license required; tax levied; exemption from tax; effective date.

(a) Corporate license required. -- No corporation, domestic or foreign, may engage in any business activity in this state without paying the corporate license tax to the Tax Commissioner of the State of West Virginia, except as provided in subsection (c) of this section.

(b) Tax levied. -- Every corporation shall pay an annual corporate license tax for the license year which begins on July 1, of each year and ends the thirtieth day of the following June. This tax shall be in addition to the annual fee, if any, payable to the Secretary of State as attorney-in-fact. The amount of this tax shall be as follows:

(1) Amount of license tax on domestic corporations. -- Every domestic corporation shall pay an annual license tax on its charter for the fiscal year beginning on July 1, of each year, based on its authorized capital stock as follows: If the authorized capital stock be $5,000, or less, $20; if more than $5,000 and not more than $10,000, $30; if more than $10,000 and not more than $25,000, $40; if more than $25,000 and not more than $50,000, $50; if more than $50,000 and not more than $75,000, $80; if more than $75,000 and not more than $100,000, $100; if more than $100,000 and not more than $125,000, $110; if more than $125,000 and not more than $150,000, $120; if more than $150,000 and not more than $175,000, $140; if more than $175,000 and not more than $200,000, $150; if more than $200,000 and not more than $1 million, $180, and an additional 20¢ on each $1,000, or fraction thereof, in excess of $200,000; if more than $1,000,000 and not more than $15,000,000, $345, and an additional 15¢ on each $1,000, or fraction thereof, in excess of $1,000,000; if more than $15,000,000, $2,500. The license tax collected hereunder shall be in addition to the annual fee, if any, payable to the Secretary of State as statutory attorney-in-fact. For the purpose of the assessment of the license tax provided by this section, and for no other purpose, shares of stock having no par value shall be presumed to be of the par value of $25 each: Provided, That if such stock was originally issued for a consideration greater than $25 per share, such license taxes as are required to be paid to the Tax Commissioner shall be computed upon the basis of the consideration for which such stock was issued.

(2) Amount of license tax on foreign corporations. -- It shall be the duty of the Tax Commissioner to assess and fix the license tax of each foreign corporation engaging in business activity in this state according to the proportion of its issued and outstanding capital stock which is represented by its property owned and used in this state, which license tax shall be at the rate prescribed in subdivision (1) of this subsection (b), plus seventy-five percent of such tax. In no event shall any such foreign corporation pay an annual license tax of less than $250, which shall be in addition to the fee of the Secretary of State as statutory attorney-in-fact. The Tax Commissioner may in any case require such additional information as he or she may deem necessary to enable him or her to assess and fix the just amount of license tax of such corporation; it shall be his or her duty to notify every such corporation of the amount so assessed; and it shall be the duty of the corporation to pay the same to the Tax Commissioner within thirty days thereafter, and if it fail to do so

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it shall be liable to the penalties prescribed in, or pursuant to, this article.

(c) Exemptions. -- Nonprofit corporations are exempt from payment of the corporate license tax but must file with the Tax Commissioner the return required by section three of this article, and pay the annual fee of the Secretary of State as attorney-in-fact under section five of this article if applicable.

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§11-12C-3. Payment and collection of tax; deposit of money; return required.

(a) Payment and collection of tax. -- When application is made to the Secretary of State for a certificate of incorporation or authority to do business in this state, the applicant shall pay all taxes and fees due under this article; and the Secretary of State shall collect the corporate license tax for the first year before issuing the certificate. Thereafter, on or before the first day of the license tax year next following the date of the certificate, and on or before the first day of each succeeding license tax year, the corporation shall pay and the Tax Commissioner shall collect the tax for a full license tax year together with the statutory attorney fee: Provided, That if the application is made on or after the first day of the second month preceding the beginning of the next license tax year, and before the first day of the license tax year, the Secretary of State shall collect the tax for the full year beginning on the first day of the next license tax year in addition to the initial tax, together with the statutory attorney fee.

(b) Deposit of money. -- The first year license tax received by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the services fees and collections account established by section two, article one, chapter fifty-nine of this code. The license tax received by the Tax Commissioner every year after the initial registration shall be deposited into the state General Revenue Fund.

(c) Returns. -- Payment of the tax and statutory attorney fee required under the provisions of this section shall be accompanied by a return on forms provided by the Tax Commissioner for that purpose. The Tax Commissioner shall upon completion of processing the return, forward it to the Secretary of State, together with a list of all corporations which have paid the tax. The return shall contain: (1) The address of the corporation's principal office; (2) the names and mailing addresses of its officers and directors; (3) the name and mailing address of the person on whom notice of process may be served; (4) the name and address of the corporation's parent corporation and of each subsidiary of the corporation licensed to do business in this state; (5) the county or county code in which the principal office address or mailing address of the company is located in; (6) business class code; and (7) any other information the Tax Commissioner considers appropriate. Notwithstanding any other provision of law to the contrary, the Secretary of State shall, upon request of any person, disclose: (A) The address of the corporation's principal office; (B) the names and addresses of its officers and directors; (C) the name and mailing address of the person on whom notice of process may be served; (D) the name and address of each subsidiary of the corporation and the corporation's parent corporation; (E) the county or county code in which the principal office address or mailing address of the company is located; and (F) the business class code.

(d) Purchase of data. -- The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State's Business Organizations Database. For the electronic purchase of the entire Business Organizations Database, the cost is $12,000 and for the electronic purchase of the monthly updates of the Business Organizations Database

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the cost is $1,000.

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§11-12C-4. Due date of return; payment of tax.

It shall be the duty of every corporation required to pay the tax to file a properly completed return together with payment of tax owed to the Tax Commissioner by July 1, of the license year; and if it fails to do so it shall be liable for payment of interest, additions to tax and penalties prescribed in article ten of this chapter and subject to the penalties prescribed in section eight of this article.

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§11-12C-5. Annual fee of Secretary of State as attorney-in-fact.

Every domestic and foreign corporation and every domestic and foreign limited partnership shall pay an annual fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation or limited partnership, which fee is due and payable at the initial registration of the corporation and limited partnership and every year thereafter with the same return, collected by the same officers, and accounted for in the same way as the annual license tax imposed on corporations under this article. Notwithstanding any provision of this section to the contrary, a corporation or limited partnership that has made a valid election to file biennial reports pursuant to §59-1-2a(d)(3) of this code may, in lieu of the annual fee, pay a biennial fee of $50 at the time of filing its biennial report. The Tax Commissioner shall deposit one half of all attorney-in-fact fees collected under this section in the state General Revenue Fund and one half of the fees in the service fees and collections account established by §59-1-2 of this code for the operation of the office of the Secretary of State. Any balance of attorney-in-fact fees previously collected by the commissioner on behalf of the Secretary of State as provided by chapter 205, Acts of the Legislature, 1992, regular session, and remaining in the account to which those deposits were made by the commissioner on or before June 30, 2001, shall be transferred to the service fees and collections account established by §59-1-2 of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

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§11-12C-6. Notice to corporations taxable; tax as lien.

(a) It shall be the duty of the Tax Commissioner, between April fifteenth and May fifteenth each year, to notify every domestic corporation and every foreign corporation currently registered to do business in this state which is or may be liable for payment of the tax imposed by this article of the time of payment of such tax and the amount thereof, together with the statutory attorney fee, if any. Such notices may be sent through the mails, addressed to the corporation at its last known post office address as shown by the records in the office of the Secretary of State.

(b) The amount of such tax shall be deemed a debt due the state, and shall be a lien as to an innocent purchaser for value, on the property and assets of the corporation prior to all other liens, except the lien for ad valorem property taxes levied on its property, from the time a notice of such lien, specifying the year and the amount for which the lien is claimed, is filed in the office of the clerk of the county commission of the county in which the property subject to such liens is situated. Such clerk shall, upon the filing in his or her office of any such notice, record such notice in the docket where general state tax liens are filed and index the same in the name of the corporation against whom the lien is claimed. Upon payment of such lien debt there shall be executed by the Tax Commissioner and delivered to the clerk of the county commission in whose office notice of such lien is filed a release thereof, which release shall be filed and recorded by such clerk in like manner as releases of judgment or tax liens are filed and recorded. Such tax shall be a preferred debt in case of insolvency.

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§11-12C-7. Monthly report by Secretary of State to Tax Commissioner as to corporations.

The Secretary of State shall within twenty days after the close of each month make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name of every corporation to which he or she issued a certificate of incorporation during the month, as well as the name of each corporation to which he or she issued a certificate of authority, with the amount of license tax paid to him or her by each; also he or she shall set out in such report the names of all corporations to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal or merger; and a statement of all moneys received during such preceding month from all sources which are due to the state, and pay the same into the treasury; if he or she fails to do so it shall be the duty of the Tax Commissioner to report such failure to the Governor.

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§11-12C-8. Administrative and criminal penalties.

The following penalties shall be in addition to the penalties and remedies available under articles nine and ten of this chapter of the code:

(a) Administrative penalty. -- The commissioner shall impose upon each delinquent corporation a fine in the amount of $100 per year for each license tax year or portion thereof in which the license tax return which is due is not filed or the license tax which is owed is not paid. This penalty shall be assessed and collected in the same manner as the license tax.

(b) Criminal penalty. -- It shall be a misdemeanor for a corporation to conduct business for more than thirty consecutive calendar days without paying in full the amount of corporate license tax which is due. The penalty for any officer, agent or employee convicted of such offense shall be a fine equal to a sum of two and one-half times the annual corporate license tax assessed for said corporation, not to exceed $1,000 per conviction.

(c) Revocation of certificate of incorporation or certificate of authority. -- Upon the establishment of a finalized liability for corporate license taxes, not subject to further administrative or judicial review under article ten of this chapter, the certificate of incorporation in the case of a domestic corporation, or the certificate of authority in the case of a foreign corporation, shall be revoked. Any corporation whose certificate of incorporation or certificate of authority has been revoked due to nonpayment of its corporate license taxes shall be reinstated to its former rights as if it had not been delinquent upon payment to the Tax Commissioner of all delinquent license taxes, plus any interest, additions or penalties accruing thereon.

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§11-12C-9. Disposition of corporate license tax collected.

All taxes collected under the provisions of this article shall be paid into the General Revenue Fund of the State Treasury in the manner provided by law.

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§11-12C-10. Applicability of tax procedure and administration act and tax crimes and penalties act.

Except when a specific provision of this article directly conflicts with a provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter of the code, the provisions of that act are fully applicable to the corporate license tax imposed by this article. In the event of any conflict, the provisions of this article shall have paramount effect, but the two articles shall be construed as complementary and harmonious unless so clearly in conflict that they cannot reasonably be reconciled. However, notwithstanding any provision of that act, the Tax Commissioner may lawfully release the names and addresses of the directors and officers of a corporation to anyone upon written request: Provided, That such request provides the correct name of the corporation as reported to the Tax Commissioner. The Tax Commissioner may charge a reasonable fee to cover the costs of processing such requests.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extension in this article.

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§11-12C-11. Effective date.

(a) The provisions of this article shall take effect on July 1, 1993, and apply to license tax years beginning July 1, 1993 and thereafter.

(b) Tax liabilities, if any, arising for taxable years ending prior to July 1, 1993, shall be determined, administered, assessed and collected as if sections seventy-six through eighty-four and eighty-six through ninety-one, article twelve of this chapter had not been repealed; and the rights and duties of the taxpayer and the State of West Virginia thereunder shall be fully and completely preserved.

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§11-12C-12. Severability.

If any provision of this article or the application thereof to any person or circumstance is for any reason adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of other provisions shall not be affected thereby.

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§11-12C-13. Repeal of article.

Each provision of this article is repealed for all taxable periods beginning on and after July 1, 2008: Provided, That tax and fee liabilities arising for license tax years ending before July 1, 2008, are determined, paid, administered, assessed and collected as if the tax imposed by this article had not been repealed, and the rights and duties of the taxpayer and the State of West Virginia are fully and completely preserved.

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