WEST VIRGINIA CODE: §11-21-37B

§11-21-37b. Special apportionment rules.

(a) General. — The Legislature hereby finds that the general formula set forth in §11-21-37a of this code for apportioning the business income of individuals, partnerships, other pass-through entities, and small business corporations taxable in this as well as in another state is inappropriate for use by certain businesses due to the particular characteristics of those businesses or the manner in which such businesses are conducted. Accordingly, the general formula set forth in §11-21-37a of this code may not be used to apportion business income when a specific formula established under this section applies to the business of the taxpayer. The Legislature further finds that the Tax Commissioner has the authority under §11-1-1 et seq. of this code to promulgate by legislative rules special formula or formulae by which a specified classification of taxpayers is required to apportion its business income. Accordingly, this section may not be construed as prohibiting the Tax Commissioner from exercising his authority to promulgate legislative rules which set forth such other special formula or formulae and in that regulation requiring a specified classification of taxpayers to apportion their business income as provided in that special formula, instead of apportioning their business income employing the general formula set forth in §11-21-37a of this code, when the commissioner believes that the formula or formulae will more fairly and more reasonably allocate and apportion to this state the adjusted federal taxable income of the taxpayer. Additionally, nothing in this section may prevent the Tax Commissioner from requiring the use, or the taxpayer from petitioning to use, as the case may be, some other method of allocation or apportionment as provided in §11-21-37a(h) of this code. Permission granted to a taxpayer under §11-21-37a(h) of this code to use another method of allocation or apportionment shall be valid for a period of five consecutive taxable years, beginning with the taxable year for which such authorization is granted, provided there is no material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment. Upon expiration of any such authorization the taxpayer may again petition under §11-21-37a of this code to use another method of apportionment. A material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment automatically revokes authorization to use that other method beginning with the taxable year in which the material change of fact occurred or the taxable year for which a material change in law first takes effect, whichever occurs first.

(b) Motor carriers. — Motor carriers of property or passengers shall apportion the business income component of their adjusted federal taxable income to this state by the use of the ratio which their total vehicle miles in this state during the taxable year bears to total vehicle miles of the corporation everywhere during the taxable year, except as otherwise provided in this subsection.

(1) Definitions. — For purposes of this subsection:

(A) "Motor carrier" means any person engaging in the transportation of passengers or property or both, for compensation by motor propelled vehicle over roads in this state, whether traveling on a scheduled route or otherwise.

(B) "Vehicle mile" means the operation of a motor carrier over a distance of one mile, whether owned or operated by a corporation.

(2) The provisions of this subsection may not apply to a motor carrier:

(A) Which neither owns nor rents real or tangible personal property located in this state, which has made no pick-ups or deliveries within this state, and which has traveled less than 50,000 vehicle miles in this state during the taxable year; or

(B) Which neither owns nor rents any real or tangible personal property located in this state, except vehicles, and which makes no more than 12 trips into or through this state during a taxable year.

(3) The mileage traveled under 50,000 miles or the mileage traveled in this state during the 12 trips into or through this state may not represent more than five percent of the total motor vehicle miles traveled in all states during the taxable year.

(c) Effective date. — The provisions of this section enacted in 2019 shall apply to all taxable years beginning on or after January 1, 2018.