WEST VIRGINIA CODE: §11-23-9A

§11-23-9a. Method of filing for business taxes.

(a) Privilege to file consolidated return. -- An affiliated group of corporations (as defined for purposes of filing a consolidated federal income tax return) shall, subject to the provisions of this section and in accordance with any regulations prescribed by the Tax Commissioner, have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of filing separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group are included in such return and consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. When a corporation is a member of an affiliated group for a fractional part of the year, the consolidated return shall include the tax base of such corporation for that part of the year during which it is a member of the affiliated group.

(b) Election binding. -- If an affiliated group of corporations elects to file a consolidated return under this article, such election once made shall not be revoked for any subsequent taxable year without the written approval of the Tax Commissioner consenting to the revocation.

(c) Consolidated return -- financial organizations. -- An affiliated group that includes one or more financial organizations may elect under this section to file a consolidated return when that affiliated group complies with all of the following rules:

(1) The affiliated group of which the financial organization is a member must file a federal consolidated income tax return for the taxable year;

(2) All members of the affiliated group included in the federal consolidated return must consent to being included in the consolidated return filed under this article. The filing of a consolidated return under this article is conclusive proof of such consent;

(3) The taxable capital of the affiliated group shall be the sum of:

(A) The pro forma West Virginia taxable capital of all financial organizations having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(B) The pro forma West Virginia taxable capital of all financial organizations not having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

WV Legislature

(C) The pro forma West Virginia taxable capital of all other members included in the federal consolidated income tax return, as shown on a combined pro forma West Virginia return prepared for all such nonfinancial organization members, except that the capital, apportionments factors and other items considered when determining tax liability shall not be included in the pro forma return prepared under this paragraph for a member that is totally exempt from tax under section seven of this article, or for a member that is subject to a different special industry apportionment rule provided for in this article. When a different special industry apportionment rule applies, the taxable capital of a member(s) subject to that special industry apportionment rule shall be determined on a separate pro forma West Virginia return for the member(s) subject to that special industry rule and the taxable capital so determined shall be included in the consolidated return;

(4) The West Virginia consolidated return is prepared in accordance with regulations of the Tax Commissioner promulgated as provided in article three, chapter twenty-nine-a of this code; and

(5) The filing of a consolidated return does not distort the taxable capital of the affiliated group. In any proceeding, the burden of proof that the taxpayer's method of filing does not distort taxable capital under this article shall be upon the taxpayer.

(d) Combined return. -- A combined return may be filed under this article by a unitary group, including a unitary group that includes one or more financial organizations, only pursuant to the prior written approval of the Tax Commissioner. A request for permission to file a combined return must be filed on or before the statutory due date of the return, determined without inclusion of any extension of time to file the return. Permission to file a combined return may be granted by the Tax Commissioner only when taxpayer submits evidence that conclusively establishes that failure to allow the filing of a combined return will result in an unconstitutional distortion of the measure of tax under this article. When permission to file a combined return is granted, combined filing will be allowed for the year(s) stated in the Tax Commissioner's letter. The combined return must be filed in accordance with regulations of the Tax Commissioner promulgated in accordance with article three, chapter twenty-nine-a of this code.

(e) Method of filing under this article deemed controlling for purposes of other business taxes articles. -- The taxpayer shall file on the same basis under article twenty-four of this chapter as such taxpayer files under this article for the taxable year.

(f) Regulations. -- The Tax Commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations filing a consolidated return, or of any unitary group of corporations filing a combined return, and of each corporation in an affiliated or unitary group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the Tax Commissioner deems necessary to clearly reflect tax liability under this article and the factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

WV Legislature

(g) Computation and payment of tax. -- In any case in which a consolidated or combined return is filed, or required to be filed, the tax due under this article from the affiliated or unitary group shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the Tax Commissioner, in effect on the last day prescribed by section nine of this article for the filing of such return, and such affiliated or unitary group, as the case may be, shall be treated as the taxpayer. However, when any member of an affiliated or unitary group that files a consolidated or combined return under this article is allowed to claim credit against its tax liability under this article for payment of any other tax, the amount of credit allowed may not exceed that member's proportionate share of the affiliated or unitary group's precredit tax liability under this article, as shown on its pro forma return.

(h) Consolidated or combined return may be required. -- If any affiliated group of corporations has not elected to file a consolidated return, or if any unitary group of corporations has not applied for permission to file a combined return, the Tax Commissioner may require such corporations to make a consolidated or combined return, as the case may be, in order to clearly reflect taxable capital of such corporations.

(i) Effective date. -- This section shall apply to taxable years beginning on or after January 1, 1996, except that financial organizations that are part of an affiliated group may elect, after the effective date of this act, to file a consolidated return prepared in accordance with the provisions of this section and subject to applicable statutes of limitation, for taxable years beginning on or after January 1, 1991, but before January 1, 1996, notwithstanding provisions then in effect prohibiting out-of-state financial organizations from filing consolidated returns for those years: Provided, That when the statute of limitations on filing an amended return for any of those years expires before July 1, 1996, the consolidated return for such year, if filed, must be filed by said July 1.

WV Legislature