WEST VIRGINIA CODE CHAPTER 11 ARTICLE 23

WV Legislature

§11-23-1. Legislative finding.

This business franchise tax on corporations and partnerships is enacted pursuant to the provision of article X, section one of the Constitution of this state, granting to the Legislature the authority to tax privileges, franchises and incomes of persons and corporations. The Legislature finds and declares that this franchise tax is imposed on the privilege of doing business in this state, and that this tax is not an ad valorem property tax imposed on the property of corporations and partnerships doing business in this state.

WV Legislature

§11-23-2. Short title; arrangement of sections or portions thereof.

This article shall be known and may be cited as the "Business Franchise Tax Act." No inference, implication or presumption of legislative construction or intent shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect shall be given to any descriptive matter or heading relating to any part, section, subsection or paragraph of this article.

WV Legislature

§11-23-3. Meaning of terms; specific terms defined.

(a) General. -- When used in this article, or in the administration of this article, terms defined in this section shall have the meanings ascribed to them herein unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.

(b) Terms defined. --

(1) Business income. -- The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations.

(2) Capital. -- The term "capital" of a taxpayer shall mean:

(A) Corporations. -- In the case of a corporation, except an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) The amount of retained earnings, appropriated and unappropriated; and

(iv) Less the cost of treasury stock.

(B) S Corporations. -- In the case of an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120S, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and unappropriated;

(iv) The amount of shareholders' undistributed taxable income;

(v) The amount of the accumulated adjustments account;

(vi) The amount of the other adjustments account; and

WV Legislature

(vii) Less the cost of treasury stock.

(C) Partnerships. -- In the case of a partnership, the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, prepared following accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year.

(D) Additional items in capital. -- The term "capital" for purposes of this article shall include such adjustments thereto as the Tax Commissioner deems necessary to properly reflect capital and such additional items from the accounts of the taxpayer as the Tax Commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(E) Allowance for certain government obligations and obligations secured by residential property. -- As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(i) The numerator of which is the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

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

(II) Obligations of this state and any political subdivision of this state;

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

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

(ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer as shown on Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

(3) Commercial domicile. -- The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed: Provided, That the commercial domicile of a financial organization, which is subject to regulation as such, shall be at the place designated as its principal office with its regulating authority.

WV Legislature

(4) Commissioner or Tax Commissioner. -- The terms "commissioner" or "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his delegate.

(5) Compensation. -- The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Corporation. -- The term "corporation" includes any corporations, S corporation, joint-stock company and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) Delegate. -- The term "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 regulations promulgated thereunder.

(8) Doing business. -- The term "doing business" means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except the activity of agriculture and farming, which shall mean the production of food, fiber and woodland products (but not timbering activity) by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof.

The activity of agriculture and farming shall mean such activity, as above defined, occurring on not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least $1,000 of products per annum through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.

(9) Domestic corporation. -- The term "domestic corporation" means a corporation organized under the laws of this state, and certain corporations organized under the laws of the state of Virginia before June 20, 1863. Every other corporation is a foreign corporation.

(10) Federal Form 1120. -- The term "Federal Form 1120" means the annual federal income tax return of any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

WV Legislature

(11) Federal Form 1065. -- The term "Federal Form 1065" means the annual federal income tax return of a partnership made pursuant to Section 6031 of the United States Internal Revenue Code of 1986, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a partnership, and filed with the federal Internal Revenue Service.

(12) Fiduciary. -- The term "fiduciary" means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(13) Financial organization. -- The term "financial organization" means:

(A) A holding company or a subsidiary thereof. As used in this section "holding company" means a corporation registered under the federal bank holding company act of 1956 or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in section 408(a)(1)(F) of the federal national housing act (12 U.S.C. 1730(a)(1)(F));

(B) A regulated financial corporation or a subsidiary thereof. As used in this section "regulated financial corporation" means:

(1) An institution, the deposits, shares or accounts of which are insured under the federal deposit insurance act, or by the federal savings and loan insurance corporation;

(2) An institution that is a member of a federal home loan bank;

(3) Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

(4) A credit union incorporated and organized under the laws of this state;

(5) A production credit association organized under 12 U.S.C. 2071;

(6) A corporation organized under 12 U.S.C. 611 through 631 (an edge act corporation); or

(7) A federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101); or

(C) A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:

(1) Making, acquiring, selling or servicing loans or extensions of credit. Loans and extensions of credit include:

(I) Secured or unsecured consumer loans;

(II) Installment obligations;

WV Legislature

(III) Mortgages or other loans secured by real estate or tangible personal property;

(IV) Credit card loans;

(V) Secured and unsecured commercial loans of any type; and

(VI) Loans arising in factoring.

(2) Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit (as defined by the Federal Reserve Board in 12 C.F.R. 225.25(b)(5)).

(3) Operating a credit card business.

(4) Rendering estate or trust services.

(5) Receiving, maintaining or otherwise handling deposits.

(6) Engaging in any other activity with an economic effect comparable to those activities described in item (1), (2), (3), (4) or (5) of this subparagraph.

(14) Fiscal year. -- The term "fiscal year" means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(15) Includes and including. -- The terms "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(16) Parent and subsidiary corporations. -- A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the "parent corporation" and the corporation which is so owned by the parent is defined to be a "subsidiary corporation".

(17) Partnership and partner. -- The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship or an unincorporated organization which under Section 761 of the Internal Revenue Code of 1986, as amended, and is not treated as a partnership for the taxable year for federal income tax purposes. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization which is a partnership.

(18) Person. -- The term "person" includes any corporation or partnership.

(19) Pro forma return. -- The term "pro forma return" when used in this article means the

WV Legislature

return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(20) Sales. -- The term "sales" means all gross receipts of the taxpayer that are "business income", as defined in this section.

(21) State. -- The term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any foreign country or political subdivision thereof.

(22) Stock. -- The term "stock" includes shares in a corporation, association or joint-stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. "Stock owned by a corporation" shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) Taxable year. -- The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year (short taxable year) under the provisions of this article, or under regulations promulgated by the Tax Commissioner, the period for which such return is made.

(24) Taxable in another state. -- The term "taxable in another state" for purposes of apportionment under this article, means a taxpayer who:

(A) Is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

(B) Would be subject to a net income tax if such other state imposed such a tax.

(25) Taxpayer. -- The term "taxpayer" means any person (as defined in this section) subject to the tax imposed by this article.

(26) This code. -- The term "this code" means the Code of West Virginia, 1931, as amended.

(27) This state. -- The term "this state" means the State of West Virginia.

(28) Treasury stock. -- The term "treasury stock" means shares of a corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not been canceled or restored to the status of authorized but unissued shares. Treasury stock is deemed to be issued shares, but not outstanding shares.

WV Legislature

§11-23-3a. Meaning of terms; general rule.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition of this article. Any reference in this article to the laws of the United States, or to the Internal Revenue Code, or to the federal income tax law shall mean the provisions of the laws of the United States as related to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to January 1, 1993, shall be given effect in determining the taxes imposed by this article for the tax period beginning January 1, 1992, and thereafter, but no amendment to laws of the United States made on or after January 1, 1993, shall be given effect.

(b) Effective date. -- The amendments to this section reenacted in the year 1993 shall be retroactive and shall apply to taxable years beginning on or after January 1, 1992, to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 1992, the law in effect for each of those years shall be fully preserved as to each such year.

WV Legislature

§11-23-4. Tax base determined.

The tax base of a taxpayer, for purposes of this article, shall be its capital, as defined and adjusted in section three of this article. If the taxpayer is also taxable in another state, then the tax base of the taxpayer shall be its capital, as defined in section three of this article, multiplied by its apportionment factor determined under section five of this article.

WV Legislature

§11-23-5. Apportionment of tax base.

(a) A taxpayer subject to the tax imposed by this article and also taxable in another state shall, for the purposes of this tax, apportion its tax base to this state by multiplying its tax base by a fraction, the numerator of which is the sum of the property factor, plus the payroll factor, plus two times the sales factor, all of which shall be determined as hereinafter provided in this section, and the denominator of which is four, reduced by the number of factors, if any, having no denominator, with the sales factor counting as two factors.

(b) Property factor. -- The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year, and the denominator of which is the average value of all real and tangible personal property owned or rented by the taxpayer and used by it during the taxable year, which is reported on Schedule L of Federal Form 1120 (or 1065 for partnerships), plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(c) Value of property. -- Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: Provided, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the net annual rental rate. Net annual rental rate is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(d) Movable property. -- The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of such utilization shall be determined by multiplying the original cost of such property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period, and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a

WV Legislature

statistical basis or by such other reasonable method acceptable to the Tax Commissioner.

(e) Leasehold improvements. -- Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(f) Average value of property. -- The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: Provided, That the Tax Commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(g) Payroll factor. -- The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer, and the denominator of which is the total compensation paid by the taxpayer during the taxable year as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(h) Compensation. -- The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only the amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

(i) Employee. -- The term "employee" means:

(1) Any officer of a corporation; or

(2) Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

(j) Compensation paid in this state. -- Compensation is paid in this state if:

(1) The employee's service is performed entirely within the state;

(2) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

WV Legislature

(3) Some of the service is performed in the state and:

(A) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(B) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(k) Sales factor. -- The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income), and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120 or 1065, and consisting of those certain pertinent portions of the (gross income) elements set forth: Provided, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(l) Allocation of sales of tangible personal property. --

(1) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the f.o.b. point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by the purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of

WV Legislature

storage in this state and the purchaser is the United States government.

(2) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed as defined in subsection (b), section seven, article twenty-four of this chapter shall be excluded from the denominator of the sales factor.

(m) Allocation of other sales. -- Sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state;

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or

(3) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in section five-a of this article.

(n) Income-producing activity. -- The term "income-producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. Such activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. "Income-producing activity" includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing or other use of real property;

(3) The sale, rental, leasing, licensing or other use of tangible personal property; or

(4) The sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, in itself, an income-producing activity: Provided, That the conduct of the business of a financial organization shall constitute an income-producing activity.

(o) Cost of performance. -- The term "cost of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(p) Other methods of allocation. --

(1) General. -- If the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may

WV Legislature

petition for, or the Tax Commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's tax base. Such petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing such return, and the petition shall include a statement of the petitioner's objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof as the Tax Commissioner may require.

(2) Burden of proof. -- In any proceeding before the Tax Commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the Tax Commissioner seeks employment of one of such methods, be on the Tax Commissioner; or

(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.

(3) Notwithstanding any other provisions of this section, financial organizations shall use only the special apportionment rules set forth in section five-a of this article.

(q) Effective date. -- The amendments to this section made by this article shall apply to all taxable years ending after the effective date of this article. The provisions of paragraph (3), subsection (p) of this section shall apply to all taxable years beginning on or after January 1, 1991.

WV Legislature

§11-23-5a. Special apportionment rules - financial organizations.

(a) General. -- The Legislature hereby finds that the general formula set forth in section five of this article for apportioning the tax base of corporations and partnerships taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section five of this article may not be used to apportion the tax base of financial organizations which shall use only the apportionment formula and methods set forth in this section.

(b) West Virginia financial organizations taxable in another state. -- A financial organization that has its commercial domicile in this state and which is taxable in another state may not apportion its tax base as provided in section five of this article, but shall apportion its tax base to this state by multiplying it by the special gross receipts factor calculated as provided in subsection (f) of this section. The product of this multiplication is the portion of its tax base that is attributable to business activity in this state.

(c) Out-of-state financial organizations with business activities in this state. -- A financial organization that does not have its commercial domicile in this state and which regularly engages in business in this state shall apportion its tax base to this state by multiplying it by the special gross receipts factor calculated as provided in subsection (f) of this section. The product of this multiplication is the portion of its tax base that is attributable to business activity in this state.

(d) Engaging in business -- nexus presumptions and exclusions. -- A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds $100,000. However, gross receipts from the following types of property, as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property or the acquisition or liquidation of collateral relating to the property shall not be a factor in determining whether the owner is engaging in business in this state:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust or a regulated investment company;

(2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of

WV Legislature

the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; or

(5) Any amounts held in an escrow or trust account with respect to property described above.

(e) Definitions. -- For purposes of this section:

(1) "Commercial domicile" means the same as that term is defined in section three of this article.

(2) "Deposit" means: (A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable: Provided, That without limiting the generality of the term "money or its equivalent", any account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any credit or instrument is primarily or secondarily liable or for a charge against a deposit account or in settlement of checks, drafts or other instruments forwarded to the bank for collection;

(B) Trust funds received or held by a financial organization, whether held in the trust department or held or deposited in any other department of the financial organization;

(C) Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other, including funds held as dealers' reserves, or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit and withheld taxes: Provided, That there shall not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization or under condition that the receipt thereof immediately reduces or extinguishes an indebtedness;

www.legislature

(D) Outstanding drafts, including advice or authorization to charge a financial organization's balance in another organization, cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if the entity is engaged in soliciting and holding balances in the regular course of its business.

(3) "Financial organization" means a financial organization as defined in subdivision (13), subsection (b), section three of this article, as well as a partnership which derives more than fifty percent of its gross business income from one or more of the activities enumerated in subparagraphs (1) through (6), inclusive, paragraph (C) of said subdivision.

(4) "Sales" means: For purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (f) of this section, regardless of their source.

(f) Special gross receipts factor. -- The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six, article twenty-four of this chapter.(1) Numerator. -- The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under section five of this article, the following:

(A) Gross receipts from the lease or rental of real or tangible personal property, whether as the economic equivalent of an extension of credit or otherwise if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if the security property is located in the state. In the event that the security property is also located in one or more other states, receipts shall be presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

WV Legislature

(D) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: Provided, That receipts are presumed to be from sources in this state and the presumption may be overcome by reference to factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(E) Interest income and other receipts from a financial organization's syndication and participation in loans, under the rules set forth in paragraphs (A) through (D), inclusive, of this subdivision;

(F) Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this state or if the billings for any receipts are regularly sent to an address in this state;

(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. In the case of merchants located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer's election, receipts from loan-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death or the grantor who either funded or established the trust is a resident of this state; or

WV Legislature

(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of service is received in this state;

(I) Gross receipts from the issuance of travelers' checks and money orders if checks and money orders are purchased in this state; and

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

(2) Denominator. -– The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(g) Limited tax credit for certain financial organizations for certain periods. -- A credit shall be allowed against the tax imposed by this article on a financial organization with its commercial domicile in this state that acquires a financial organization that does not have its commercial domicile in this state: Provided, That the goodwill associated with the acquisition is first added to the net equity of the financial organization with its commercial domicile in this state on or after January 1, 2008: Provided, however, That the prior recordation of the goodwill associated with the acquisition on the balance sheet of a financial organization that does not have its commercial domicile in this state shall not affect, limit or reduce the availability of the credit authorized by this subsection. The credit shall equal fifty percent of the goodwill associated with the acquisition in the amount first recorded on the balance sheet of the financial organization with its commercial domicile in this state, multiplied by the tax rate applicable to the financial organization under this article for the taxable year. For purposes of this subsection, the term "goodwill" shall have the meaning set forth in the capital adequacy guidelines for bank holding companies established by the Federal Reserve Board in 12 C.F.R. 225, Appendix A, as the same may be revised from time to time.

(h) Effective date. -- The provisions of this section enacted in chapter one hundred sixty-seven, Acts of the Legislature, 1991, shall apply to all taxable years beginning on or after January 1, 1991. The amendments to this section, enacted in the year one 1996, shall apply to taxable years beginning after December 31, 1995. The amendments to this section, enacted in the year 2008, shall apply to taxable years beginning after December 31, 2008: Provided, That the amendments to subsection (g) of this section, enacted in the year 2008, shall apply to taxable years beginning after December 31, 2007.

WV Legislature

§11-23-5b.

Repealed.

Acts, 2008 Reg. Sess., Ch. 215.

WV Legislature

§11-23-6. Imposition of tax; change in rate of tax.

(a) General. -- An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect of the benefits and protection conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation owning or leasing real or tangible personal property located in this state or doing business in this state and from every partnership owning or leasing real or tangible personal property located in this state or doing business in this state effective on and after July 1, 1987.

(b) Amount of tax and rate; effective date. --

(1) On and after July 1, 1987, the amount of tax shall be the greater of $50 or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: Provided, That when the taxpayer's first taxable year under this article is a short taxable year, the taxpayer's liability shall be prorated based upon the ratio which the number of months in which such short taxable year bears to twelve: Provided, however, That this subdivision shall not apply to taxable years beginning on or after January 1, 1989.

(2) Taxable years after December 31, 1988. -- For taxable years beginning on or after January 1, 1989, the amount of tax due under this article shall be the greater of $50 or seventy-five one hundredths of one percent of the value of the tax base as determined under this article.

(3) Taxable years after June 30, 1997. -- For taxable years beginning on or after July 1, 1997, the amount of tax due under this article shall be the greater of $50 or seventy hundredths of one percent of the value of the tax base as determined under this article.

(4) Taxable years after December 31, 2006. -- For taxable years beginning on or after January 1, 2007, the amount of tax due under this article shall be the greater of $50 or fifty-five one hundredths of one percent of the value of the tax base as determined under this article.

(5) Taxable years after December 31, 2008. -- For taxable years beginning on or after January 1, 2009, the amount of tax due under this article shall be the greater of $50 or forty-eight one hundredths of one percent of the value of the tax base as determined under this article.

(6) Taxable years after December 31, 2009. -- For taxable years beginning on or after January 1, 2010, the amount of tax due under this article shall be the greater of $50 or forty-one one hundredths of one percent of the value of the tax base as determined under this article.

(7) Taxable years after December 31, 2010. -- For taxable years beginning on or after January 1, 2011, the amount of tax due under this article shall be the greater of $50 or

WV Legislature

thirty-four one hundredths of one percent of the value of the tax base as determined under this article.

(8) Taxable years after December 31, 2011. -- For taxable years beginning on or after January 1, 2012, the amount of tax due under this article shall be the greater of $50 or twenty-seven one hundredths of one percent of the value of the tax base as determined under this article.

(9) Taxable years after December 31, 2012. -- For taxable years beginning on or after January 1, 2013, the amount of tax due under this article shall be the greater of $50 or twenty one hundredths of one percent of the value of the tax base as determined under this article.

(10) Taxable years after December 31, 2013. -- For taxable years beginning on or after January 1, 2014, the amount of tax due under this article shall be the greater of $50 or ten one hundredths of one percent of the value of the tax base as determined under this article.

(11) Taxable years after December 31, 2014. -- For taxable years beginning on or after January 1, 2015, there shall be no tax due under the provisions of this article.

(c) Short taxable years. -- When the taxpayer's taxable year for federal income tax purposes is a short taxable year, the tax determined by application of the tax rate to the taxpayer's tax base shall be prorated based upon the ratio which the number of months in such short taxable year bears to twelve: Provided, That when the taxpayer's first taxable year under this article is less than twelve months, the taxpayer's liability shall be prorated based upon the ratio which the number of months the taxpayer was doing business in this state bears to twelve, but in no event shall the tax due be less than $50.

WV Legislature

§11-23-7. Persons and other organizations exempt from tax.

The following organizations and persons are exempt from the tax imposed by this article to the extent provided in this section:

(a) Natural persons doing business in this state that are not doing business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Natural persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons;

(b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption does not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly, in the generation of unrelated business income (as defined in the Internal Revenue Code) of any corporation or organization if the unrelated business income is subject to federal income tax;

(c) Insurance companies which pay this state a tax upon premiums and insurance companies that pay the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code;

(d) Production credit associations organized under the provisions of the federal Farm Credit Act of 1933: Provided, That this exemption does not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code;

(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the Labor Management Relations Act, 1947), as amended, prior to January 1, 1985;

(f) Any credit union organized under the provisions of chapter thirty-one or any other chapter of this code: Provided, That this exemption does not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;

(g) Any corporation organized under this code which is a political subdivision of the State of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code;

(h) Any corporation or partnership engaged in the activity of agriculture and farming, as defined in subdivision (8), subsection (b), section three of this article: Provided, That if a corporation or partnership is not exclusively engaged in that activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the Tax Commissioner, among its several activities and only that portion attributable to the activity of agriculture and farming is exempt from tax under this article;

WV Legislature

(i) Any corporation or partnership licensed under article twenty-three, chapter nineteen of this code to conduct horse or dog racing meetings or a pari-mutuel system of wagering: Provided, That if the corporation or partnership is not exclusively engaged in this activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the Tax Commissioner, among its several activities and only that portion attributable to the activity of conducting a horse or dog racing meeting or a pari-mutuel system of wagering is exempt from tax under this article;

(j) For those tax years beginning after June 30, 1998, any corporation or partnership operating as a hunting club: Provided, That the corporation or partnership distributes no income or dividends to its owners or stockholders. For the purposes of this subsection, a hunting club is a group of persons owning land which is used principally for hunting purposes by the members of the club and guests, and where any charges made for hunting are principally for the purpose of defraying the costs of operating and maintaining the club and club properties or establishing a reasonable reserve to meet the operating and maintenance costs of the club. The Tax Commissioner shall, by legislative rule promulgated in accordance with article three, chapter twenty-nine of this code, further prescribe the definition of a hunting club and the manner and method in which this credit may be claimed; and

(k) For tax years beginning after December 31, 2002, any person or other organization engaged in the activity of providing venture capital to West Virginia businesses: Provided, That if the person or organization is not exclusively engaged in that activity, only that portion of its tax base under this article that is attributable to the providing of venture capital to West Virginia businesses is exempt from tax under this article and its tax liability under this article is determined by multiplying its precredit tax liability by a fraction equal to one minus a fraction, the numerator of which is its gross receipts attributable to its venture capital activities in this state and the denominator of which is its total gross receipts from all of its business activities in this state. For purposes of this exemption, a "person or organization engaged in the activity of providing venture capital to West Virginia business" means a certified West Virginia capital company as defined in section four, article one, chapter five-e of this code.

WV Legislature

§11-23-8. Accounting periods and methods of accounting.

(a) General rule. -- For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) Change of taxable year. -- If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its return for the taxable year filed under this article.

(c) Methods of accounting.

(1) Same as federal. -- A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the Tax Commissioner, in writing, consents to use of another method.

(2) Change of accounting methods. -- If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its return for the taxable year filed under this article.

WV Legislature

§11-23-9. Annual returns.

(a) In general. -- Every person subject to the tax imposed by this article shall make and file an annual return for its taxable year with the Tax Commissioner on or before:

(1) The fifteenth day of the third month of the next succeeding taxable year if the person is a corporation; or

(2) The fifteenth day of the fourth month of the next succeeding taxable year if the corporation is a partnership.

The annual return shall include such information as the Tax Commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) Special rule for tax exempt organizations with unrelated business taxable income. -- Notwithstanding the provisions of subsection (a) of this section, when a business franchise tax return is required from an organization generally exempt from tax under subsection (b), section seven of this article, which has unrelated business taxable income, the annual return shall be filed on or before the fifteenth day of the fifth month following the close of the taxable year.

(c) Effective date. -- The amendments to this section, made in the year one thousand nine hundred ninety-six, shall apply to tax returns that become due for taxable years beginning on or after the first day of that year.

WV Legislature

§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

(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,

WV Legislature

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.

(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

WV Legislature

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

§11-23-10. Extension of time for filing returns.

The Tax Commissioner may grant a reasonable extension of time for filing any returns or other document required by this article upon such terms as he may by regulations prescribe. An extension of time for filing Federal Form 1120, Federal Form 990T or Federal Form 1065 shall automatically extend the time for filing any return or other document required by this article for the same period as the extension for filing such federal form. An extension of time for filing a return shall not extend the time for payment of the tax.

WV Legislature

§11-23-11. Time and place for paying tax shown on returns.

(a) In general. -- The person required to make the annual return required by this article shall, without assessment or notice and demand from the Tax Commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Date fixed for payment of tax. -- The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

WV Legislature

§11-23-12. Extensions of time for paying tax.

(a) Amount determined on return. -- The Tax Commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency. -- Under regulations prescribed by the Tax Commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the Tax Commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) No extension for certain deficiencies. -- No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

WV Legislature

§11-23-13. Declaration and payment of estimated tax.

(a) Requirement of declaration. -- Every taxpayer subject to tax under this article shall file a declaration of estimated tax for the taxable year if the taxpayer's liability for tax under this article can reasonably be expected to exceed $12,000 for the taxable year. A taxpayer not required by this section to file a declaration and pay estimated tax may elect to so file and pay.

(b) Definition of estimated tax. -- The term "estimated tax" means the amount which a taxpayer estimates to be his liability under this article for the taxable year.

(c) Contents of declaration. -- The declaration shall contain such information as the Tax Commissioner may, by rules or regulations, require, including, but not limited to, such detailed information as may be necessary to estimate the taxpayer's liability under section six of this article.

(d) Time for filing declaration. -- A declaration of estimated tax shall be filed on or before the fifteenth day of the fourth month of the taxable year, for any taxable year beginning after June 30, 1987.

(e) Amendment of declaration. -- A taxpayer may amend his declaration at any time during the taxable year in accordance with regulations prescribed by the Tax Commissioner. If any amendment of a declaration is filed by a taxpayer, the remaining installments, if any, shall be rateably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment. If any amendment is made after the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(f) Payment of estimated tax. -- The estimated tax shall be paid in four equal installments. At the time the declaration of estimated payment is filed, the taxpayer shall pay one fourth of the estimated tax liability for the taxable year. The second, third and fourth installments shall be paid on the following fifteenth day of the sixth, ninth and twelfth months of the taxable year, respectively.

(g) Application to short taxable year. -- This section shall apply to a taxable year of less than twelve months in accordance with regulations of the Tax Commissioner.

(h) Installment paid in advance. -- Any taxpayer may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.

WV Legislature

§11-23-14. Requirements concerning returns, notices, records and statements.

(a) General. -- The Tax Commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The Tax Commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the Tax Commissioner may deem sufficient to show whether or not such person is liable for tax under this article.

(b) As a part of a full and complete tax return, the taxpayer shall provide:

(1) A copy of pages one through four of its signed, federal corporation income tax return or its signed federal partnership income tax return, as filed with the Internal Revenue Service for the taxable year; and

(2) If a consolidated federal income tax return was filed for the taxable year:

(A) Supporting schedules showing the consolidation of its income statement and balance sheets, including schedules supporting any eliminations and adjustments made to the income statement and balance sheets;

(B) A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership; and

(C) A signed statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal consolidated filing purposes and the income statement and the balance sheet reported to this state under the tax imposed by this article.

(c) Notice of qualifications as receiver, etc.

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the Tax Commissioner, as may be required by regulation.

WV Legislature

§11-23-15. Signing of returns and other documents.

(a) General. -- Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the Tax Commissioner.

(b) Signing of corporation returns. -- The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) Signature presumed authentic. -- The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him

(d) Verification of returns. -- Except as otherwise provided by the Tax Commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

WV Legislature

§11-23-16. Place for filing returns or other documents.

Tax returns, statements or other documents, or copies thereof, required by this article or by regulations shall be filed with the Tax Commissioner by delivering it, in person or by mail, to his office in Charleston, West Virginia: Provided, That the Tax Commissioner may, by regulation, prescribe the place for filing such returns, statements or other documents, or copies thereof.

WV Legislature

§11-23-17. Credits against tax; expiration of credits.

(a) A credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, for the taxable year (determined before application of other allowable credits) multiplied by a fraction, the numerator of which is the gross income of the business subject to tax under article thirteen-a of this chapter and the denominator of which is the total amount of gross receipts derived from or attributable to all of taxpayer's activity in West Virginia.

(b) For taxable years ending after June 30, 1998, a credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, for the taxable year (determined before application of other allowable credits) multiplied by a fraction, the numerator of which is the gross income of the business subject to tax under article thirteen of this chapter and the denominator of which is the total amount of gross receipts derived from or attributable to all of taxpayer's activity in West Virginia: Provided, That such credit shall be prorated and only that amount attributable to months of the taxable year beginning after June 30, 1988, shall be allowed as a credit.

(c) A parent taxpayer who files a separate return under this article shall be allowed a credit against such taxpayer's liability for the tax under this article for the amount of net taxes that would have been paid without regard to the adjustment required by subparagraph (D), paragraph (2), subsection (b), section three of this article for the taxable year by a subsidiary corporation or partnership: Provided, That the amount of credit allowed shall not exceed the amount of tax that would have been paid, without regard to such adjustment, under this article by the subsidiary or partnership, multiplied by the percentage of the parent's ownership of the subsidiary corporation or partnership. In the case of corporations, this percentage shall be equal to the percentage of stock of all classes owned by the parent. In no case shall any credit allowable by this section, which is not used on an annual return, be carried forward or back, but instead the same shall be forfeited.

(d) A credit shall be allowed against the tax imposed by this article for the taxable year equal to the amount of liability of the taxpayer for the taxable year for the full amount of any tax imposed pursuant to article eight of this chapter on the capital of the business, as determined under sections fourteen and fourteen-a, article three of this chapter.

(e) Expiration of credits. -- The credits authorized in subsection (a) of this section, shall expire and not be authorized or allowed for any taxable month beginning on or after March 1, 1989. For taxable years beginning before said March 1, and ending after such date, the annual credit heretofore allowed by subsection (a) of this section shall be prorated by the number of months in the taxable year and only that portion of the credit attributable to months ending prior to said first day of March shall be allowable under this section.

WV Legislature

§11-23-17a. (Effective July 1, 1987) Tax credit for business investment and jobs expansion; industrial expansion and revitalization; eligible research and development projects; coal loading facilities.

(a) There shall be allowed as a credit against the tax imposed by this article for the taxable year the amount determined under articles thirteen-c, thirteen-d and thirteen-e of this chapter relating respectively to:

(1) The tax credit for business investment and jobs expansion;

(2) The tax credit for industrial expansion and revitalization and eligible research and development projects; and

(3) The tax credit for coal loading facilities.

(b) The Tax Commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and articles thirteen-c, thirteen-d and thirteen-e of this chapter.

(c) This provision shall take effect on July 1, 1987.

WV Legislature

§11-23-17b. Application of tax credits.

Except where otherwise provided, no tax credit earned by one member of the combined group, but not fully used by or allowed to that member, may be used, in whole or in part, by another member of the group or applied, in whole or in part, against the tax of another member of the combined group; and a tax credit carried over into a subsequent year as to the member that incurred it, and available as a credit to that member in a subsequent year, will be considered in the computation of the capital of that member in the subsequent year regardless of the composition of that capital as apportioned, allocated or wholly within this state: Provided, That unused and unexpired economic development tax credits that were earned during a tax year in which the taxpayer filed a consolidated return under this article may, if otherwise allowed within the statutory limitations applicable to the tax credit, be used, in whole or in part, or applied, in whole or in part, against the taxes imposed by this article on any member of the taxpayer's combined group to the extent the credits would have been allowed had the taxpayer continued to file a consolidated return. For purposes of this section the term economic development tax credit means and is limited to a tax credit asserted on a tax return under article thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-q, thirteen-r or thirteen-s of this chapter or under article one, chapter five-e of this code.

WV Legislature

§11-23-18. Tax under this article in addition to all other taxes.

The returns, requirements and taxes set forth and imposed under this article shall be in addition to all other reports, requirements, taxes and duties set forth and imposed by this state.

WV Legislature

§11-23-19. Records.

(a) Every taxpayer liable for reporting or paying taxes under this article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the Tax Commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the Tax Commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement.

WV Legislature

§11-23-20. Criminal penalties.

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 extenso in this article.

WV Legislature

§11-23-21. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten 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 extenso in this article.

WV Legislature

§11-23-22. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be 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 such provision to other persons or circumstances shall not be affected thereby.

WV Legislature

§11-23-23. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The State Tax Commissioner shall require taxpayers subject to this article to file an information return for the tax year 1984 and tax year 1985. These returns shall be due on July 1, 1985 and on July 1, 1986, respectively, unless an extension is provided by the Tax Commissioner. These returns shall be on forms and pursuant to instructions provided by the Tax Commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after July 1, 1987 were in force and effect, as to such taxpayer during the informational tax year: Provided, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the Tax Commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of $1,000 or ten percent of the pro forma tax liability, as computed by the Tax Commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The Tax Commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning July 1, 1987, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

WV Legislature

§11-23-24.

Repealed.

Acts, 2002 Reg. Sess., Ch. 104.

WV Legislature

§11-23-24a. Tax credit for value-added products from raw agricultural products; regulations; termination of credit.

(a) Effective for taxable years beginning July 1, 1997, notwithstanding any provisions of this code to the contrary, any person, newly and solely engaged in the production of value-added products from raw agricultural products are allowed a credit, in the amount of $1,000 for each taxable year against the tax imposed by this article, for a period of five years from the date the person becomes subject to this article. The credit is allowed only against the tax imposed on that capital which is attributable to the value-added production activity in this state.

(b) For purposes of this section, "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. The following enterprises qualify as processing raw agricultural products into value-added products: (1) The conversion of lumber into furniture, toys, collectibles and home furnishings; (2) the conversion of fruit into wine; (3) the conversion of honey into wine; (4) the conversion of wool into fabric; (5) the conversion of raw hides into semifinished or finished leather products; (6) the conversion of milk into cheese; (7) the conversion of fruits or vegetables into a dried, canned or frozen product; (8) the conversion of feeder cattle into commonly acceptable marketable retail portions; (9) the conversion of aquatic animals into a dried, canned, cooked or frozen product; and (10) the conversion of poultry into a dried, canned, cooked or frozen product.

(c) The Tax Commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a as necessary to effectuate the purposes of this section.

(d) No credit is available to any taxpayer under this section after July 1, 2002: Provided, That taxpayers which have gained entitlement to the credit pursuant to the terms of this section prior to July 1, 2002, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this section until the original five-year credit entitlement has been exhausted or otherwise terminated.

WV Legislature

§11-23-25. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

WV Legislature

§11-23-26. Effective date.

The provisions of this article as amended or added by this act shall take effect on July 1, 1988, and apply to all taxable years ending after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.

WV Legislature

§11-23-27. Credit for franchise tax paid to another state.

(a) Effective for taxable years beginning on or after January 1, 1991, and notwithstanding any provisions of this code to the contrary, any financial organization having its commercial domicile in this state shall be allowed a credit against the tax imposed by this article for any taxable year for taxes paid to another state. That credit shall be equal in amount to the lesser of:

(1) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state and which tax was based upon or measured by the financial organization's capital and was paid with respect to the same taxable year; or

(2) The portion of the tax actually paid that the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the law of such other state.

(b) Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in this section, and any refunds of such taxes, made or received by such financial organization with respect to the taxable year, but after the due date of the annual return required by this article for the taxable year, including any extensions, shall likewise be accounted for in the taxable year in which such additional payment is made or such refund is received by the financial organization.

(c) For tax years beginning on or after January 1, 2009, the provisions of this section are null and void and of no force or effect.

WV Legislature

§11-23-28. Notice of business activities report.

(a) Except as provided by subsection (b) of this section, for each taxable year every corporation and partnership that carries on any business activity or owns or maintains property in West Virginia for the taxable year shall file a business activity report with the Tax Commissioner. The report must be filed on or before the fifteenth day of the fourth month after the end of the corporation or partnership's taxable year. The filing of a report shall not be a factor in determining whether a corporation or partnership is subject to taxation by this state.

(b) A corporation or partnership is not required to file a report under this section if:

(1) During the taxable year for which a report is due, the corporation or partnership is registered to engage in business in West Virginia in accordance with the provisions of article twelve of this chapter;

(2) A tax return was filed for that taxable year for any of the taxes subject to the provisions of article ten, chapter eleven of this code;

(3) The corporation or partnership is a type of organization expressly exempted from taxation by West Virginia or federal statute or regulation; or

(4) The activities or interests in property owned in this state by the corporation or partnership consist solely of activities or property expressly exempted from taxation by West Virginia or federal statute or regulation.

(c) Until a report is filed in compliance with this section, a corporation or partnership may not pursue in the courts of this state any claim not relating to tax liability:

(1) That arose under West Virginia law; or

(2) On a contract that is executed under West Virginia law, if the claim arose or the contract was executed before or during the taxable year for which a report should have been filed. However, the court in which such a claim is filed may allow the claim to be pursued if the corporation or partnership:

(A) Establishes that it was not required to file a report under subsection (b);

(B) Files a report for each year for which a report is due;

(C) Files a tax return for each year for which a return is due; or

(D) Provides adequate security, including a bond, in an amount sufficient to cover all tax liabilities, including additions to tax, penalties and interest.

(d) As used in this section, carrying on an activity or maintaining property in West Virginia

WV Legislature

includes, but is not limited to, any of the following:

(1) Maintaining an office or other place of business in West Virginia;

(2) The presence of employees, agents, representatives or independent contractors in West Virginia, if they are conducting business on behalf of the corporation or partnership, regardless of whether the individual or person is residing or regularly stationed in West Virginia;

(3) Owning or maintaining real property, tangible personal property, or intangible property that is in West Virginia; or

(4) Any activity of a financial organization described in item (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) or (x) of paragraph (B), subdivision (4), subsection (b), section five-a of this article.

WV Legislature

§11-23-29.

Reserved for future use.

WV Legislature

§11-23-30.

Reserved for future use.

WV Legislature

§11-23-31.

Reserved for future use.

WV Legislature

§11-23-32.

Reserved for future use.

WV Legislature

§11-23-33.

Reserved for future use.

WV Legislature

§11-23-34.

Reserved for future use.

WV Legislature

§11-23-35.

Reserved for future use.

WV Legislature

§11-23-36.

Reserved for future use.

WV Legislature

§11-23-37.

Reserved for future use.

WV Legislature

§11-23-38.

Reserved for future use.

WV Legislature

§11-23-39.

Reserved for future use.

WV Legislature

§11-23-40.

Reserved for future use.

WV Legislature