WEST VIRGINIA CODE: §11-24-13A

§11-24-13a. Method of filing for business taxes.

(a) Privilege to file consolidated return. --

(1) 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 the return and consent to the filing of the return. The filing of a consolidated return is considered consent. When a corporation is a member of an affiliated group for a fractional part of the year, the consolidated return shall include the income of the corporation for that part of the year during which it is a member of the affiliated group.

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

(b) Election binding. --

(1) If an affiliated group of corporations elects to file a consolidated return under this article for any taxable year ending after June 30, 1987, the election once made shall not be revoked for any subsequent taxable year without the written approval of the Tax Commissioner consenting to the revocation.

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

(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 consent.

(3) The West Virginia taxable income of the affiliated group shall be the sum of:

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(A) The pro forma West Virginia taxable income 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 the financial organizations; plus

(B) The pro forma West Virginia taxable income 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 the financial organizations; plus

(C) The pro forma West Virginia taxable income 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 nonfinancial organization members, except that income, income adjustments and exclusions, apportionment 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 five of this article or for a member that is subject to a different special industry apportionment rule provided in this article. When a different special industry apportionment rule applies, the West Virginia taxable income of a member subject to that special industry apportionment rule is determined on a separate pro forma West Virginia return for the member subject to that special industry rule and the West Virginia taxable income 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.

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

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

(d) Combined return. --

(1) 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 taxable income. When permission to file a combined return is granted, combined filing will be allowed for the tax years stated in the Tax Commissioner's letter. The combined return must be filed in accordance with regulations of the Tax Commissioner

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promulgated in accordance with article three, chapter twenty-nine-a of this code.

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

(e) Method of filing under this article deemed controlling for purposes of other business taxes articles. --

Notwithstanding the provisions of section nine-a, article twenty-three of this chapter or any other provision of this code to the contrary, the taxpayer shall file on the same basis under article twenty-three of this chapter as the taxpayer files under this article for the taxable year.

(f) Regulations. --

The Tax Commissioner shall prescribe regulations as he or she considers necessary in order that the tax liability of any affiliated group or combined group of corporations filing a consolidated return, or of any unitary group of corporations filing a combined return, and of each corporation in the affiliated or unitary group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted in a manner as the Tax Commissioner considers necessary to clearly reflect the income tax liability and the income factors necessary for the determination of liability and in order to prevent avoidance of 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, combined or unitary group shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the Tax Commissioner, in effect on the last day prescribed by section thirteen of this article for the filing of the return, and such affiliated, combined or unitary group, as the case may be, shall be treated as the taxpayer. However, when any member of an affiliated, combined 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, combined 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. --

The Tax Commissioner may require any person or corporation to make and file a separate return or to make and file a composite, unitary, consolidated or combined return, as the case may be, in order to clearly reflect the taxable income of such corporations.

(i) Effective date. --

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The amendments to this section made by chapter one hundred seventy-nine, Acts of the Legislature in the year 1990, shall apply to all taxable years ending after March 8, 1990. Amendments to this article enacted by this act in the year 1996 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, as amended, 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 limitation on filing an amended return for any of those years expires before July 1, 1996, the consolidated return for that year, if filed, must be filed by said first day of July.

(j) Combined reporting required. --

For tax years beginning on and after January 1, 2009, and notwithstanding the provisions of section nine-a, article twenty-three of this chapter or any other provision of this code to the contrary except the last sentence of this subsection, any taxpayer engaged in a unitary business with one or more other corporations shall file a combined report which includes the income, determined under section thirteen-c or thirteen-d of this article, and the allocation and apportionment of income provisions of this article, of all corporations that are members of the unitary business, and other information as required by the Tax Commissioner. Notwithstanding any provision to the contrary in this article, the income of an insurance company, the allocation or apportionment of income related thereto and the apportionment factors of an insurance company shall not be included in a combined report filed under this article unless specifically required to be included by the Tax Commissioner.

(k) Combined reporting at Tax Commissioner's discretion. --

(1) The Tax Commissioner may require the combined report to include the income and associated apportionment factors of any persons that are not included pursuant to subsection (j) of this section, but that are members of a unitary business, in order to reflect proper apportionment of income of the entire unitary businesses.

(2) If the Tax Commissioner determines that the reported income or loss of a taxpayer engaged in a unitary business with any person not included pursuant to subsection (j) of this section represents an avoidance or evasion of tax by the taxpayer, the Tax Commissioner may, on a case-by-case basis, require all or any part of the income and associated apportionment factors be included in the taxpayer's combined report.

(3) With respect to inclusion of associated apportionment factors pursuant to this section, the Tax Commissioner may require the exclusion of any one or more of the factors, the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state, or the employment of any other method to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and

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apportionment of the taxpayer's income.

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