WEST VIRGINIA CODE: §11-24-13C

§11-24-13c. Determination of taxable income or loss using combined report.

(a) The use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include, in addition to other types of income, the taxpayer member's apportioned share of business income of the combined group, where business income of the combined group is calculated as a summation of the individual net business incomes of all members of the combined group. A member's net business income is determined by removing all but business income, expense and loss from that member's total income, as provided in this section and section thirteen-d of this article.

(b) Components of income subject to tax in this state; application of tax credits and post-apportionment deductions. --

(1) Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include:

(A) Its share of any business income apportionable to this state of each of the combined groups of which it is a member, determined under subsection (c) of this section;

(B) Its share of any business income apportionable to this state of a distinct business activity conducted within and without the state wholly by the taxpayer member, determined under the provisions for apportionment of business income set forth in this article;

(C) Its income from a business conducted wholly by the taxpayer member entirely within the state;

(D) Its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under subsection (g), section thirteen-d of this article;

(E) Its nonbusiness income or loss allocable to this state, determined under the provisions for allocation of nonbusiness income set forth in this article;

(F) Its income or loss allocated or apportioned in an earlier year, required to be taken into account as state source income during the income year, other than a net operating loss; and

(G) Its net operating loss carryover. If the taxable income computed pursuant to this section and section thirteen-d of this article results in a loss for a taxpayer member of the combined group, that taxpayer member has a West Virginia net operating loss, subject to the net operating loss limitations, and carryover provisions of this article. This West Virginia net operating loss is applied as a deduction in a prior or subsequent year only if that taxpayer

WV Legislature

has West Virginia source positive net income, whether or not the taxpayer is or was a member of a combined reporting group in the prior or subsequent year: Provided, That net operating loss carryovers that were earned during a tax year in which the taxpayer filed a consolidated return under this article may be applied as a deduction from the West Virginia taxable income of any member of the taxpayer's controlled group until the net operating loss carryover is used or expires pursuant to the net operating loss provisions of this article.

(2) Except where otherwise provided, no tax credit or post-apportionment deduction earned by one member of the 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 total income of the combined group; and a post-apportionment deduction carried over into a subsequent year as to the member that incurred it, and available as a deduction to that member in a subsequent year, will be considered in the computation of the income of that member in the subsequent year regardless of the composition of that income 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, against 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.

(c) Determination of taxpayer's share of the business income of a combined group apportionable to this state. --

The taxpayer's share of the business income apportionable to this state of each combined group of which it is a member shall be the product of:

(1) The business income of the combined group, determined under section thirteen-d of this article; and

(2) The taxpayer member's apportionment percentage, determined in accordance with this article, including in the property, payroll and sales factor numerators the taxpayer's property, payroll and sales, respectively, associated with the combined group's unitary business in this state and including in the denominator the property, payroll and sales of all members of the combined group, including the taxpayer, which property, payroll and sales are associated with the combined group's unitary business wherever located.

The property, payroll and sales of a partnership shall be included in the determination of the partner's apportionment percentage in proportion to a ratio the numerator of which is the amount of the partner's distributive share of partnership's unitary income included in the income of the combined group in accordance with section thirteen-d of this article and the

WV Legislature

denominator of which is the amount of the partnership's total unitary income.

WV Legislature