WEST VIRGINIA CODE: §11-24-13D

§11-24-13d. Determination of the business income of the combined group.

The business income of a combined group is determined as follows:

(a) From the total income of the combined group, determined under subsection (b) of this section, subtract any income and add any expense or loss, other than the business income, expense or loss of the combined group.

(b) Except as otherwise provided, the total income of the combined group is the sum of the income of each member of the combined group determined under federal income tax laws, as adjusted for state purposes, as if the member were not consolidated for federal purposes. The income of each member of the combined group shall be determined as follows:

(1) For any member incorporated in the United States, or included in a consolidated federal corporate income tax return, the income to be included in the total income of the combined group shall be the taxable income for the corporation after making allowable adjustments under this article.

(2) For any member not included in subdivision (1) of this subsection, the income to be included in the total income of the combined group shall be determined as follows:

(A) A profit and loss statement shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained.

(B) Adjustments shall be made to the profit and loss statement to conform it to the accounting principles generally accepted in the United States for the preparation of such statements except as modified by this regulation.

(C) Adjustments shall be made to the profit and loss statement to conform it to the tax accounting standards required by this article.

(D) Except as otherwise provided by regulation, the profit and loss statement of each member of the combined group, and the apportionment factors related thereto, whether United States or foreign, shall be translated into the currency in which the parent company maintains its books and records.

(E) Income apportioned to this state shall be expressed in United States dollars.

(3) In lieu of the procedures set forth in subdivision (2) of this subsection, and subject to the determination of the Tax Commissioner that it reasonably approximates income as determined under this article, any member not included in subdivision (1) of this subsection may determine its income on the basis of the consolidated profit and loss statement which

includes the member and which is prepared for filing with the Securities and Exchange Commission by related corporations. If the member is not required to file with the Securities and Exchange Commission, the Tax Commissioner may allow the use of the consolidated profit and loss statement prepared for reporting to shareholders and subject to review by an independent Auditor. If above statements do not reasonably approximate income as determined under this article, the Tax Commissioner may accept those statements with appropriate adjustments to approximate that income.

(c) If a unitary business includes income from a partnership, the income to be included in the total income of the combined group shall be the member of the combined group's direct and indirect distributive share of the partnership's unitary business income.

(d) All dividends paid by one to another of the members of the combined group shall, to the extent those dividends are paid out of the earnings and profits of the unitary business included in the combined report, in the current or an earlier year, be eliminated from the income of the recipient. Except as otherwise provided, this provision shall not apply to dividends received from members of the unitary business which are not a part of the combined group. Except when specifically required by the Tax Commissioner to be included, all dividends paid by an insurance company directly or indirectly to a corporation that is part of a unitary business with the insurance company shall be deducted or eliminated from the income of the recipient of the dividend.

(e) Except as otherwise provided by regulation, business income from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the occurrence of any of the following events, deferred business income resulting from an intercompany transaction between members of a combined group shall be restored to the income of the seller and shall be apportioned as business income earned immediately before the event:

(1) The object of a deferred intercompany transaction is:

(A) Resold by the buyer to an entity that is not a member of the combined group;

(B) Resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged; or

(C) Converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

(2) The buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary.

(f) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Internal Revenue Code Section 170, be subtracted first from the business income of the combined group, subject to the income limitations of that

section applied to the entire business income of the group and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense, subject to the income limitations of that section applied to the nonbusiness income of that specific member. Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

(g) Gain or loss from the sale or exchange of capital assets, property described by Internal Revenue Code Section 1231(a)(3) and property subject to an involuntary conversion shall be removed from the total separate net income of each member of a combined group and shall be apportioned and allocated as follows:

(1) For each class of gain or loss (short term capital, long term capital, Internal Revenue Code Section 1231 and involuntary conversions) all members' business gain and loss for the class shall be combined without netting between classes and each class of net business gain or loss separately apportioned to each member using the member's apportionment percentage determined under subsection (c), section thirteen-c of this article.

(2) Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this state, using the rules of Internal Revenue Code Sections 1222 and 1231, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, Section 1231 property and involuntary conversions which are nonbusiness items allocated to another state.

(3) Any resulting state source income or loss, if the loss is not subject to the limitations of Internal Revenue Code Section 1211 of a taxpayer member produced by the application of the preceding subsections shall then be applied to all other state source income or loss of that member.

(4) Any resulting state source loss of a member that is subject to the limitations of Section 1211 shall be carried over by that member and shall be treated as state source short-term capital loss incurred by that member for the year for which the carryover applies.

(h) Any expense of one member of the unitary group which is directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary group shall be allocated to that other member as corresponding nonbusiness or exempt expense, as appropriate.