WEST VIRGINIA CODE: §11-24-6A

§11-24-6a. Additional modification increasing federal taxable income; disallowance of deduction taken under IRC §199.

(a) General rule. -- In addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, there shall be added to federal taxable income the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, and taken as a deduction when determining federal taxable income for the taxable year for federal income tax purposes, unless subsection (b), (d) or (e) of this section applies.

(b) Member of affiliated group filing on separate entity basis in this state. -- When the taxpayer is a member of an affiliated group for federal income tax purposes for the taxable year and computation of the deduction allowed under Section 199 of the Internal Revenue Code for the taxable year is determined at the affiliated group level but the taxpayer files on a separate entity basis under this article, then in addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, there shall be added to the taxpayer's pro forma federal taxable income the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, and taken, in whole or in part, as a deduction when determining the taxpayer's pro forma federal taxable income for the taxable year. The taxpayer shall file with its annual return under this article a schedule that shows: (1) The amount of the Section 199 deduction computed for the affiliated group for federal income tax purposes for the taxable year; and (2) how that deduction is allocated among the various members of the affiliated group for purposes of determining each member's pro forma federal taxable income for the taxable year.

(c) Consolidated federal return consolidated state return. -- When the taxpayer elects to file a consolidated return under this article for the taxable year, the general rule stated in subsection (a) of this section shall apply.

(d) Combined state return. -- When a combined return is filed under this article for the taxable year, the members of the group filing the combined return shall in addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, add to the combined group's pro forma federal taxable income for the year, the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, by the appropriate person or persons and taken, in whole or in part, as a deduction when determining pro forma federal taxable income of the combined group for the taxable year. The combined group shall file with its annual return under this article a schedule that shows: (1) The amount of the Section 199 deduction computed by the entity, or each entity that made the computation for federal income tax purposes, and to what entity and to what state it was allocated; (2) how that deduction is allocated for state income tax purposes; (3) how the amount of the Section 199 deduction taken as a deduction when determining the pro forma federal taxable income of the

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combined group was determined; and (4) such other information as the Tax Commissioner may require.

(e) Taxpayer with flow-through income. -– When the taxpayer's federal taxable income includes a distributive share of income, gain or loss of a partnership, limited liability company, electing small business corporation, or other entity treated as a partnership for federal income tax purposes, and when the taxpayer's distributive share for the taxable year includes a deduction, or portion of a deduction computed under Section 199 of the Internal Revenue Code, as amended, for the taxable year, then in addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, the taxpayer shall add the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, that flows through to the taxpayer for federal income tax purposes for the taxable year. The taxpayer shall file with its annual return filed under this article a copy of all schedules K-1 it received showing allocation of a Section 199 deduction and such other information as the Tax Commissioner may require.

(f) Failure to attach required schedules. -– When the taxpayer fails to include with the annual return due under this article the schedule or schedules required by this section, the return shall be treated as an incomplete return until the day the required schedule or schedules are filed with the Tax Commissioner. An incomplete return showing an overpayment of tax may not be treated as a claim for refund until the day the defect is cured. The filing of an incomplete return shall not start the running of the limitations period that would limit the time during which the Tax Commissioner may issue an assessment or take other action to enforce compliance with this article for the taxable year for which the incomplete return is filed.

(g) Audit adjustment to federal taxable income. -– When auditing for compliance with this article, the Tax Commissioner may change a taxpayer's computation of federal taxable income or pro forma taxable income to comply with the laws of the United States as in effect for the taxable year and incorporated by reference into this article.

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