# WEST VIRGINIA CODE CHAPTER 11 ARTICLE 24

## §11-24-1. Legislative findings.

The Legislature hereby finds and declares that the adoption by this state for its corporation net income tax purposes of certain provisions of the laws of the United States relating to the determination of income for federal income tax purposes will: (1) Simplify preparation of state corporation net income tax returns by taxpayers; (2) improve enforcement of the state corporation net income tax through better use of information obtained from federal income tax audits; and (3) aid interpretation of the state corporation net income tax law through increased use of federal judicial and administrative determinations and precedents.

The Legislature does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

In recognition of the fact that corporate business is increasingly conducted on a national and international basis, it is the intent of the Legislature to adopt a combined system of income tax reporting for corporations. A separate accounting system is sometimes not adequate to accurately measure the income of multistate and multinational corporations doing business in this state and sometimes creates tax disadvantages for West Virginia corporations in competition with those multistate and multinational corporations. Therefore, it is the intent of the Legislature to capture lost revenue with adoption of a combined reporting tax base.

## §11-24-2. Short title; arrangement and classification.

This article may be cited as the "West Virginia Corporation Net Income Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, nor shall be descriptive matter or headings relating to any part, section, subsection or paragraph be given any legal effect.

## §11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has 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 in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2024, but prior to January 1, 2026, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2026, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year 2026 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2026, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

**§11-24-3a. Specific terms defined.**

(a) For purposes of this article:

(1) Aggregate effective rate of tax. -- The term "aggregate effective rate of tax" shall mean the sum of the effective rates of tax imposed by a state or United States possession or any combination thereof on a related member.

(2) 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 and includes all income which is apportionable under the Constitution of the United States.

(3) Captive real estate investment trust. -- The term "captive real estate investment trust" shall mean a real estate investment trust, the shares or beneficial interests of which:

(A) Are not regularly traded on an established securities market and:

(B) Are more than fifty percent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly or constructively, by a single entity that is:

(i) Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

(ii) Not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended;

(C) For purposes of applying subparagraph (i), paragraph (B) of this subdivision, the following entities are not considered an association taxable as a corporation:

(i) Any real estate investment trust as defined in Section 856 of the Internal Revenue Code of 1986, as amended, other than a "captive real estate investment trust";

(ii) Any qualified real estate investment trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified real estate investment trust subsidiary of a "captive real estate investment trust";

(iii) Any listed Australian property trust, meaning an Australian unit trust registered as a "managed investment scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market, or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of the trust; or

(iv) Any qualified foreign entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:

(1) At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets as defined in Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents and United States government securities;

(2) The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;

(3) The entity distributes at least eighty-five percent of its taxable income as computed in the jurisdiction in which it is organized to the holders of its shares or certificates of beneficial interest on an annual basis;

(4) Not more than ten percent of the voting power or value in the entity is held directly or indirectly or constructively by a single entity or individual or the shares or beneficial interests of the entity are regularly traded on an established securities market; and

(5) The entity is organized in a country which has a tax treaty with the United States.

(D) A real estate investment trust that is intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the U.S. Internal Revenue Code by reason of Section 856(h)(2) of the Internal Revenue Code is not considered a captive real estate investment trust within the meaning of this section.

(E) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first becomes a real estate investment trust is not considered not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust, and shall file an amended return reflecting the retroactive designation for any tax year or part year occurring during its initial year of status as a real estate investment trust. For purposes of this section, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of Section 856 of the Internal Revenue Code and has elected to be treated as a real estate investment trust pursuant to Section 856(c)(1) of the Internal Revenue Code.

(4) Combined group. -- The term "combined group" means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to subsection (j) or (k), section thirteen-a of this article in determining the taxpayer's share of the net business income or loss apportionable to this state.

(5) 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.

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

(7) Corporation. -- "Corporation" means any corporation as defined by the laws of this state or organization of any kind treated as a corporation for tax purposes under the laws of this state, wherever located, which if it were doing business in this state would be subject to the tax imposed by this article. The business conducted by a partnership which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation's distributive share of the partnership income, inclusive of guaranteed payments to the extent prescribed by regulation. The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

(8) Delegate. -- The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the state Tax Division 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.

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

(10) Effective rate of tax. -- The term "effective rate of tax" means, as to any state or United States possession, the maximum statutory rate of tax imposed by the state or possession on a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or United States possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by the credit or similar adjustment.

(11) Engaging in business. -- The term "engaging in business" or "doing business" means any activity of a corporation which enjoys the benefits and protection of government and laws in this state.

(12) 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 federal 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.

(13) 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.

(14) 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:

(i) 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;

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

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

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

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

(vi) A corporation organized under 12 U.S.C. §611 through §631 (an Edge Act corporation); or

(vii) 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:

(i) 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;

(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;

(ii) 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 CFR 225.25(b)(5);

(iii) Operating a credit card business;

(iv) Rendering estate or trust services;

(v) Receiving, maintaining or otherwise handling deposits;

(vi) Engaging in any other activity with an economic effect comparable to those activities described in subparagraph () (i), (ii), (iii), (iv) or (v) of this paragraph.

(15) 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.

(16) Includes and including. -- The terms "includes" and "including", when used in a definition contained in this article, do not exclude other things otherwise within the meaning of the term being defined.

(17) Insurance company. -- The term "insurance company" means any corporation subject to taxation under section twenty-two, article three, chapter twenty-nine of this code or chapter thirty-three of this code or an insurance carrier subject to the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code or any corporation that would be subject to taxation under any of those provisions were its business transacted in this state.

(18) Intangible expense. -- The term "intangible expense" includes: (A) Expenses, losses and costs for, related to or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property to the extent those amounts are allowed as deductions or costs in determining taxable income before operating loss deductions and special deductions for the taxable year under the Internal Revenue Code; (B) amounts directly or indirectly

allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code to the extent those expenses and costs are directly or indirectly for, related to or in connection with the expenses, losses and costs referenced in subdivision (A) of this subsection; (C) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (D) royalty, patent, technical and copyright fees; (E) licensing fees; and (F) other similar expenses and costs.

(19) Intangible property. -- "Intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets.

(20) Interest expense. -- "Interest expense" means amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code.

(21) "Internal Revenue Code" means the Internal Revenue Code as defined in section three of this article, as amended and in effect for the taxable year and without regard to application of federal treaties unless expressly made applicable to states of the United States.

(22) Nonbusiness income. -- The term "nonbusiness income" means all income other than business income.

(23) Ownership. -- In determining the ownership of stock, assets or net profits of any person, the constructive ownership of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, shall apply.

(24) "Partnership" means a general or limited partnership or organization of any kind treated as a partnership for tax purposes under the laws of this state.

(25) Person. -- The term "person" is considered interchangeable with the term "corporation" in this section. The term "person" means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, association, corporation whether or not the corporation is, or would be if doing business in this state, subject to the tax imposed by this article, company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization of any kind.

(26) Pro forma return. -- The term "pro forma return" when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an affiliated group.

(27) Public utility. -- The term "public utility" means any business activity to which the

jurisdiction of the Public Service Commission of West Virginia extends under section one, article two, chapter twenty-four of this code.

(28) Qualified regulated investment company. -- The term "qualified regulated investment company" means any regulated investment company other than a regulated investment company where more than fifty percent of the voting power or value of the beneficial interests or share of which are owned or controlled, directly or indirectly, constructively or otherwise, by a single entity that is:

(A) Subject to the provision of subchapter C, chapter 1, subtitle A, Title 26 of the United States Code, as amended;

(B) Not exempt from federal income tax pursuant to the provision of Section 501 of the Internal Revenue Code of 1986, as amended; and

(C) Not a regulated investment company as defined in Section 3 of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-3: Provided, That a regulated invested company, the shares of which are held in a segregated asset account of a life insurance corporation (as described in Section 817 of the Internal Revenue Code of 1986, as amended), shall be treated as a qualified regulated investment company.

(29) Real estate investment trust. -- The term "real estate investment trust" has the meaning ascribed to such term in Section 856 of the Internal Revenue Code of 1986, as amended.

(30) Regulated investment company. -- The term "regulated investment company" has the same meaning as ascribed to such term in Section 851 of the Internal Revenue Code of 1986, as amended.

(31) Related entity. -- "Related entity" means: (A) A stockholder who is an individual or a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; or (C) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(32) Related member. -- "Related member" means a person that, with respect to the taxpayer

during all or any portion of the taxable year, is: (A) A related entity; (B) a component member as defined in subsection (b), Section 1563 of the Internal Revenue Code; (C) a person to or from whom there is attribution of stock ownership in accordance with subsection (e), Section 1563 of the Internal Revenue Code; or (D) a person that, notwithstanding its form or organization, bears the same relationship to the taxpayer as a person described in subdivisions (A) through (C), inclusive, of this subsection.

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

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

(35) Tax. -- The term "tax" includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(36) Taxable year, tax year. -- The term "taxable year" or "tax year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(37) Tax Commissioner. -- The term "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(38) Tax haven. -- The term "tax haven" means a jurisdiction that, for a particular tax year in question: (A) Is identified by the Organization for Economic Cooperation and Development as a tax haven or as having a harmful preferential tax regime; or (B) a jurisdiction that has no, or nominal, effective tax on the relevant income and: (i) That has laws or practices that prevent effective exchange of information for tax purposes with other governments regarding taxpayers subject to, or benefitting from, the tax regime; (ii) that lacks transparency. For purposes of this definition, a tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open to public scrutiny and apparent or are not consistently applied among similarly situated taxpayers; (iii) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy; (iv) explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or (v) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy. For purposes of this definition, the phrase "tax regime" means a set or system of rules, laws, regulations or practices by which taxes are imposed on any person, corporation or entity, or on any income, property, incident, indicia or activity pursuant to governmental authority.

(39) Taxpayer. -- The term "taxpayer" means any person subject to the tax imposed by this

article.

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

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

(42) "United States" means the United States of America and includes all of the states of the United States, the District of Columbia and United States territories and possessions.

(43) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. For purposes of this article and article twenty-three of this chapter, any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or the percentage of its distributive or any other share of partnership income. A business conducted directly or indirectly by one corporation through its direct or indirect interest in a partnership is unitary with that portion of a business conducted by one or more other corporations through their direct or indirect interest in a partnership if there is a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts and the corporations are members of the same commonly controlled group.

(44) West Virginia taxable income. -- The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in this article: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be the portion of its taxable income as defined and adjusted as is allocated or apportioned to this state under the provisions of this article.

(45) Valid business purpose. -- "Valid business purpose" means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for a business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into new business markets.

(b) Effective date. -- The amendments to this section made in the year 2009 are retroactive and are effective for tax years beginning on and after January 1, 2009.

## §11-24-3b. General meaning of definition of the term tax haven for specified jurisdictions.

(a) General. -- For purposes of this article and article twenty-three of this chapter, a jurisdiction that, for a particular tax year in question is identified by the Organization for Economic Cooperation and Development as a tax haven or as having a harmful preferential tax regime means and includes any and all jurisdictions so identified as of the most recent list or compilation of jurisdictions issued, published or adopted by the Organization for Economic Cooperation and Development on or before the effective date of this section: Provided, That all amendments made to the most recent list or compilation of jurisdictions identified as a tax haven or as having a harmful preferential tax regime that were issued, published or adopted by the Organization for Economic Cooperation and Development after March 8, 2008, but prior to January 1, 2011, shall be given effect in determining whether a jurisdiction is a tax haven as that term is defined in section three of this article.

(b) Effective date. -- This section as enacted in 2008 is effective on passage: Provided, That the amendment to this section enacted in 2011 applies retroactively to March 8, 2008, and remains effective until this section is either amended or repealed.

## §11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.

Primary tax. -- (1) In the case of taxable periods beginning after June 30, 1967, and ending prior to January 1, 1983, a tax is hereby imposed for each taxable year at the rate of six percent per annum on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five.

(2) In the case of taxable periods beginning on or after January 1, 1983, and ending prior to July 1, 1987, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, and any banks, banking associations or corporations, trust companies, building and loan associations and savings and loan associations, at the rates which follow:

(A) On taxable income not in excess of $50,000, the rate of six percent; and

(B) On taxable income in excess of $50,000, the rate of seven percent.

(3) In the case of taxable periods beginning on or after July 1, 1987, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of nine and three-quarters percent. Beginning July 1, 1988, and on each July 1 thereafter for four successive calendar years, the rate shall be reduced by fifteen one hundredths of one percent per year, with such rate to be nine percent on and after July 1, 1992.

(4) In the case of taxable periods beginning on or after January 1, 2007, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of eight and three-quarters percent.

(5) In the case of taxable periods beginning on or after January 1, 2009, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of eight and one-half percent.

(6) In the case of taxable periods beginning on or after January 1, 2012, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property,

activity or other sources in this state, except corporations exempt under section five of this article, at the rate of seven and three-quarters percent: Provided, That the reduction in tax authorized by this subsection shall be suspended if the combined balance of funds as of June 30, 2011, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2011: Provided, however, That the rate reduction schedule will resume in the calendar year immediately following any subsequent fiscal year when the combined balance of funds as of June 30 of that fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B next equals or exceeds ten percent of the General Revenue Fund budgeted for the immediately succeeding fiscal year.

(7) In the case of taxable periods beginning on or after January 1, 2013, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of seven percent: Provided, That the reduction in tax authorized by this subsection shall be suspended for one calendar year subsequent to the occurrence of the suspension of the reduction in tax authorized by subdivision (6) of this section: Provided, however, That the reduction in tax on the first day of any calendar year authorized by this subsection shall be suspended if the combined balance of funds as of June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding year.

(8) In the case of taxable periods beginning on or after January 1, 2014, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of six and one-half percent: Provided, That the reduction in tax authorized by this subsection shall be suspended for one calendar year subsequent to the occurrence of the suspension of the reduction in tax authorized by subdivision (7) of this section: Provided, however, That the reduction in tax on the first day of any calendar year authorized by this subsection shall be suspended if the combined balance of funds as of June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding year.

## §11-24-4a. Effect of rate changes during taxable year.

(a) If any rate of tax imposed by this article changes to become effective after December 31, of a calendar year, and if the taxable year included the effective date of the change of rate (unless that date is the first day of the taxable year) then: (1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change of rate, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of months in each period bears to the number of months in the entire taxable year.

(b) For purposes of subsection (a):

(1) If the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) If a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change of rate.

**§11-24-4b. Dividends paid deduction to be added back in determining net income for captive real estate investment trusts and regulated investment companies; deductible intangible expenses and deductible interest paid to be added back in determining net income of certain entities.**

(a) The dividend paid deduction otherwise allowed by federal law in computing net income of a real estate investment trust that is subject to federal income tax shall be added back in computing the tax imposed by this article if the real estate investment trust is a captive real estate investment trust.

(b) The dividend paid deduction otherwise allowed by federal law in computing net income of a regulated investment company that is subject to federal income tax shall be added back in computing the tax imposed by this article unless the regulated investment company is a qualified regulated investment company as defined in this article.

(c) Intangible expenses otherwise deductible to be added back for certain taxpayers. --

(1) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible intangible expense directly or indirectly paid, accrued or incurred in connection with one or more direct or indirect transactions with one or more related members.

(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the intangible expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state in an amount equal to the higher of the tax paid by the related member with respect to the portion of its income representing the intangible expense paid, accrued or incurred by the taxpayer, or the tax that would have been paid by the related member with respect to that portion of its income if: (A) That portion of its income had not been offset by expenses or losses; or (B) the tax liability had not been offset by a credit or credits. The credit determined shall be multiplied by the apportionment factor of the taxpayer in this state. However, in no case shall the credit exceed the taxpayer's liability in this state attributable to the net income taxed as a result of the adjustment required by subdivision (1) of this subsection.

(3) (A) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply to the portion of the intangible expense that the taxpayer establishes by clear and convincing evidence meets both of the following requirements: (i) The related member during the same taxable year directly or indirectly paid, accrued or incurred a portion to a person that is not a related member; and (ii) the transaction giving rise to the intangible expense between the taxpayer and the related member was undertaken for a valid business purpose.

(B) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and

convincing evidence of the type and in the form specified by the Tax Commissioner that: (i) The related member was subject to tax on its net income in this state or another state or possession of the United States or some combination thereof; (ii) the tax base for said tax included the intangible expense paid, accrued or incurred by the taxpayer; and (iii) the aggregate effective rate of tax applied to the related member is no less than the tax rate imposed under this article.

(C) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The intangible expense was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (ii) the related member's income from the transaction was subject to a comprehensive income tax treaty between that country and the United States; (iii) the related member's income from the transaction was taxed in that country at a tax rate at least equal to that imposed by this state; and (iv) the intangible expense was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be reflected accurately.

(d) Interest expense otherwise deductible to be added back for certain taxpayers. --

(1) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible interest paid, accrued or incurred to a related member during the taxable year.

(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the interest expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state equal to the higher of the tax paid by the related member with respect to the portion of its income representing the interest expense paid, accrued or incurred by the taxpayer, or the tax that would have been paid by the related member with respect to that portion of its income if: (A) That portion of its income had not been offset by expenses or losses; or (B) the tax liability had not been offset by a credit or credits. The credit determined shall be multiplied by the apportionment factor of the taxpayer in this state. However, in no case shall the credit exceed the taxpayer's liability in this state attributable to the tax imposed under this article as a result of the adjustment required by subdivision (1) of this subsection.

(3) (A) The adjustment required in subdivision (1) of this subsection and the credit allowed in

subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence, of the type and in the form determined by the commissioner, that: (i) The transaction giving rise to interest expense between the taxpayer and the related member was undertaken for a valid business purpose; and (ii) the interest expense was paid, accrued or incurred using terms that reflect an arm's length relationship.

(B) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The related member was subject to tax on its net income in this state or another state or possession of the United States or some combination thereof; (ii) the tax base for said tax included the interest expense paid, accrued or incurred by the taxpayer; and (iii) the aggregate effective rate of tax applied to the related member is no less than the statutory rate of tax applied to the taxpayer under this chapter.

(C) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The interest expense is paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (ii) the related member's income from the transaction is subject to a comprehensive income tax treaty between that country and the United States; (iii) the related member's income from the transaction is taxed in that country at a tax rate at least equal to that imposed by this state; and (iv) the interest expense was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be properly reflected.

(e) Nothing in this subsection shall be construed to limit or negate the commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(f) Effective date. -- The amendments to this section made in the year 2009 are retroactive and are effective for tax years beginning on and after January 1, 2009.

## §11-24-5. Corporations exempt from tax.

The following corporations shall be exempt from the tax imposed by this article to the extent provided in this section:

(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

(b) 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.

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

(d) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of 1986, as amended: Provided, That said corporations shall file the information return required by section thirteen-b of this article.

(e) Trusts 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, 1967.

**§11-24-6. Adjustments in determining West Virginia taxable income.**

(a) General. -- In determining West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted and determined before the apportionment provided by section seven of this article, by the items specified in this section.

(b) Adjustments increasing federal taxable income. -- There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority of the state;

(2) Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

(4) The amount of unrelated business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, of a corporation which by reason of its purposes is generally exempt from federal income taxes;

(5) The amount of any net operating loss deduction taken for federal income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended;

(6) Any amount included in federal taxable income which is a net operating loss from sources without the United States after making the decreasing adjustments provided in subdivisions (5) and (7), subsection (c) of this section for Section 951 income and Section 78 income. Federal taxable income from sources without the United States shall be determined in accordance with the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended; and

(7) The amount of foreign taxes deducted in determining federal taxable income.

(c) Adjustments decreasing federal taxable income. -- There shall be subtracted from federal taxable income to the extent included therein:

(1) Any gain from the sale or other disposition of property having a higher fair market value on July 1, 1967, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any gain which does not exceed the difference between the fair market value and the adjusted basis:

Provided, however, That for tax years beginning after December 31, 2008, no amount of gain from the sale or other disposition of property having a higher fair market value on July 1, 1967, than the adjusted basis at said date for federal income tax purposes may be subtracted from federal taxable income to the extent included therein;

(2) The amount of any refund or credit for overpayment of income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(3) The amount added to federal taxable income due to the elimination of the reserve method for computation of the bad debt deduction;

(4) The full amount of interest expense actually disallowed in determining federal taxable income which was incurred or continued to purchase or carry obligations or securities of any state or of any political subdivision of the state;

(5) The amount required to be added to federal taxable income as a dividend received from a foreign (nonUnited States) corporation under Section 78 of the Internal Revenue Code of 1986, as amended, by a corporation electing to take the foreign tax credit for federal income tax purposes;

(6) The amount of salary expenses disallowed as a deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51 of the Internal Revenue Code of 1986, as amended;

(7) The amount included in federal adjusted gross income by the operation of Section 951 of the Internal Revenue Code of 1986, as amended;

(8) Employer contributions to medical savings accounts established pursuant to section fifteen, article sixteen, chapter thirty-three of this code to the extent included in federal adjusted gross income for federal income tax purposes less any portion of employer contributions withdrawn for purposes other than payment of medical expenses: Provided, That the amount subtracted pursuant to this subsection for any one taxable year may not exceed the maximum amount that would have been deductible from the corporation's federal adjusted gross income for federal income tax purposes if the aggregate amount of the corporation's contributions to individual medical savings accounts established under section fifteen, article sixteen, chapter thirty-three of this code had been contributed to a qualified plan as defined under the Employee Retirement Income Security Act of 1974, as amended; and

(9) Any amount included in federal taxable income which is foreign source income. Foreign source income is any amount included in federal taxable income which is taxable income from sources without the United States, less the adjustments provided in subdivisions (5) and (7) of this subsection.

In determining "foreign source income", the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended, shall be applied.

(d) Net operating loss deduction. -- Except as otherwise provided in this subsection, there is allowed as a deduction for the taxable year an amount equal to the aggregate of: (1) The West Virginia net operating loss carryovers to that year; plus (2) the net operating loss carrybacks to that year: Provided, That no more than $300,000 of net operating loss from any taxable year beginning after December 31, 1992, may be carried back to any previous taxable year. For purposes of this subsection, the term "West Virginia net operating loss deduction" means the deduction allowed by this subsection, determined in accordance with Section 172 of the Internal Revenue Code of 1986, as amended.

(1) Special rules. --

(A) When the corporation further adjusts its adjusted federal taxable income under section seven of this article, the West Virginia net operating loss deduction allowed by this subsection shall be deducted after the section seven adjustments are made;

(B) The Tax Commissioner shall prescribe the transition regulations as he or she deems necessary for fair and equitable administration of this subsection as amended by this act.

(2) Effective date. -- The provisions of this subsection, as amended by chapter one hundred nineteen, Acts of the Legislature, 1988, apply to all taxable years ending after June 30, 1988; and to all loss carryovers from taxable years ending on or before said June 30.

(e) Special adjustments for expenditures for water and air pollution control facilities. --

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities or air pollution control facilities as defined in Section 169 of the Internal Revenue Code of 1986, as amended; and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of the water pollution control facilities or air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law, including extensions of the time, for the taxable year in which the amounts were paid or incurred. The election shall be made in that manner, and the scope of application of that election shall be defined, as the Tax Commissioner may by rule prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven of this article

to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under said section, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall, instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven of this article, be made to the portion of the taxpayer's net income, computed without regard to the adjustments, allocated and apportioned to this state in accordance with said section.

(f) Allowance for certain government obligations and obligations secured by residential property. -- The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with subsections (b), (c) and (e) of this section shall be further adjusted by multiplying the taxable income after the adjustment by said subsections by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of 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 obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or 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;

(B) Obligations or securities of this state and any political subdivision or authority of the state;

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

(D) 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.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.

(g) The amendments to the provisions of this section made during the 1998 regular session of the Legislature apply to all taxable years beginning on or after December 31, 1997.

**§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 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.

**§11-24-6b. Decreasing modification reducing federal taxable income for the income of Qualified Opportunity Zone Businesses; effective date.**

(a) General. — In addition to the amounts authorized to be subtracted from federal taxable income pursuant to §11-24-6(c) of this code, there shall be subtracted from federal taxable income, an amount equal to net income included in federal taxable income by a corporate taxpayer in a taxable year that is ordinary income derived from a qualified opportunity zone business located in a qualified opportunity zone located in West Virginia.

(b) Eligibility. — To be entitled to modification provided for in subsection (a), the qualified opportunity zone business must be a newly registered business in West Virginia registered on or after January 1, 2019 and before January 1, 2024. Limited liability companies that are treated as corporations for purposes of the federal income tax and West Virginia corporation net income tax and which otherwise qualify in accordance with the requirements and limitations of this section may qualify for the modification authorized under this section.

(c) Duration. — The modification provided for in subsection (a) of this section shall apply with respect to a taxpayer during the 10-year period beginning with the first full taxable year during which the qualified opportunity zone business first qualifies as a qualified opportunity zone business, or the first year in which the qualified opportunity zone business reports net income: Provided, That the qualified opportunity zone business first qualifies as such on or after January 1, 2019.

(d) The following definitions apply to this section:

(1) "Newly registered business" means a business that is formed on or after January 1, 2019 and before January 1, 2024, that is first required to obtain a business registration certificate under §11-12-1 et seq. of this code from the Tax Commissioner on or after January 1, 2019 and before January 1, 2024, and which is not the reorganization of a business that existed prior to January 1, 2019.

(2) "Reorganization of an existing business" includes, but is not limited to, a change in the name of a business, a change in the form of doing business such as, but not limited to, a proprietorship that reorganizes as a partnership or other business entity, a subsidiary that becomes a stand-alone business entity, a division of an existing business that becomes a separate business and any other similar type of business reorganization. For purposes of this definition any entity or organization that is determined by the Tax Commissioner to be an alter ego, nominee or instrumentality of an existing or previously existing business, as determined in accordance with the criteria specified in §11-12-5 of this code is a business resulting from reorganization of an existing business.

(3) "Qualified Opportunity Zone Business" means Qualified Opportunity Zone Business as that term is defined in Section 1400Z-2 of the Internal Revenue Code.

(4) "Qualified Opportunity Zone" means Qualified Opportunity Zone as that term is defined

in Section 1400Z-1 of the Internal Revenue Code.

(e) Rules. — The Tax Commissioner may propose legislative rules, or promulgate interpretive or procedural rules, as the commissioner deems necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section. All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

**(f) Effective date; expiration of modification, preservation of entitlement. — The modification authorized by this section becomes effective and is authorized for taxable years beginning on and after January 1, 2019: Provided, That unless sooner terminated by law, the modification authorized by this section will terminate for taxable years beginning on and after January 1, 2024, and no new entitlement to the modification is authorized thereafter; Provided however, That those taxpayers shall retain that entitlement for the remainder of the 10-year application period over which the original entitlement applies, if the Taxpayer otherwise remains in compliance with the requirements of this section.**

**§11-24-6c. Additional modification decreasing federal taxable income; net liability under apportionment.**

In addition to the adjustments to federal taxable income under section six of this article, the amounts under this section are subtracted from the federal taxable income of a corporation determined before the apportionment provided by section seven of this article in determining West Virginia taxable income.

(a) For purposes of this section, "net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of the taxpayer, as computed in accordance with generally accepted accounting principles, and "net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the taxpayer, as computed in accordance with generally accepted accounting principles.

(b) Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with generally accepted accounting principles, as of the effective date of this section, shall be eligible for this subtraction.

(c) If the application of (1) The Proviso contained in subsection (e) of section seven of this article; (2) Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and (3) Subdivision (13) of subsection (e) of section seven of this article results in an aggregate increase to the taxpayer's net deferred tax liability or an aggregate decrease to the taxpayer's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the taxpayer shall be entitled to a subtraction, as determined in this section.

(d) For the 10-year period beginning with the taxpayer's taxable year that begins on or after January 1, 2033, a taxpayer shall be entitled to a subtraction in computing West Virginia taxable income equal to one tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or the aggregate net change thereof, from a net deferred tax asset to a net deferred tax liability, as described in subsection (c) of this section, as computed in accordance with generally accepted accounting principles, that resulted from the application of (1) The Proviso contained in subsection (e) of section seven of this article; (2) Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and (3) Subdivision (13) of subsection (e) of section seven of this article, but for the subtraction provided under this section.

(e) The subtraction calculated under this section shall not be reduced as a result of any events subsequent to such calculation including, but not limited to, any disposition or abandonment of assets. Such subtraction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the subtraction under this section is greater than taxpayer's federal taxable income as adjusted by section six of this article, any excess subtraction shall be carried forward and applied as a subtraction to taxpayer's federal taxable income in determining taxpayer's West Virginia taxable income in future tax

years until fully utilized.

(f) Any taxpayer intending to claim a subtraction under this section shall file a statement with the Tax Commissioner on or before July 1, 2024, specifying the total amount of the subtraction which the taxpayer claims. The statement shall be made on such form and in such manner as prescribed by the commissioner and shall contain such information or calculations as the commissioner may specify. No subtraction shall be allowed under this section for any taxable year except to the extent claimed in accordance with this subsection, in the manner prescribed by the commissioner. Nothing in this subsection shall limit the authority of the commissioner to review or re-determine the proper amount of any subtraction claimed, whether on the statement required under this subsection or on a tax return for any taxable year.

**§11-24-7. Allocation and apportionment.**

(a) *General*. — Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term "net income" means the taxpayer's federal taxable income adjusted as provided in section six of this article.

(b) *"Taxable in another state" defined*. — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer 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 corporation stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.

(c) *Business activities entirely within West Virginia*. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not "taxable in another state": *Provided,* That for tax years beginning before January 1, 2009, the business activities of a financial organization having its commercial domicile in this state are considered to take place entirely in this state, notwithstanding that the organization may be "taxable in another state": *Provided, however*, That for tax years beginning on or after January 1, 2009, the income from the business activities of a financial organization that are taxable in another state shall be apportioned according to the applicable provisions of this article.

(d) *Business activities partially within and partially without West Virginia; allocation of nonbusiness income*. — If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4), inclusive, of this subsection: *Provided,* That to the extent the items constitute business income of the taxpayer, they may not be so allocated but they shall be apportioned to this state according to the provisions of subsection (e) of this section and to the applicable provisions of section seven-b of this article.

(1) *Net rents and royalties*. —

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state; or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) *Capital gains*. —

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale; or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to Section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, from sales of natural resources severed in this state shall be allocated to this state if they are nonbusiness income.

(3) *Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state*. —

(4) *Patent and copyright royalties*. —

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is

produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(5) *Corporate partner's distributive share*. —

(A) Persons carrying on business as partners in a partnership, as defined in Section 761 of the Internal Revenue Code of 1986, as amended, are liable for income tax only in their separate or individual capacities.

(B) A corporate partner's distributive share of income, gain, loss, deduction or credit of a partnership shall be modified as provided in section six of this article for each partnership. For taxable years beginning on or after December 31, 1998, the distributive share shall then be allocated and apportioned as provided in this section using the partnership's property, payroll and sales factors. The sum of that portion of the distributive share allocated and apportioned to this state shall then be treated as distributive share allocated to this state; and that portion of distributive share allocated or apportioned outside this state shall be treated as distributive share allocated outside this state, unless the taxpayer requests or the Tax Commissioner, under subsection (h) of this section requires that the distributive share be treated differently.

(C) This subdivision shall be null and void and of no force or effect for tax years beginning on or after January 1, 2009.

(e) *Business activities partially within and partially without this state; apportionment of business income*. — All net income, after deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the denominator of which is four, reduced by the number of factors, if any, having no denominator: *Provided,* That for tax years beginning on or after January 1, 2022, all net income, after deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by the sales factor described in this subsection.

(1) *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 the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the

taxpayer during the taxable year.

(2) *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 rules of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "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 property and includes:

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

(B) 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.

(3) *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 the utilization shall be determined by multiplying the original cost of the 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 statistical basis or by other reasonable method acceptable to the Tax Commissioner.

(4) *Leasehold improvements.* — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer 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.

(5) *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.

(6) *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 for compensation 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.

(7) *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 amounts paid directly to employees are included in the payroll factor. Amounts considered as 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 the amounts constitute income to the recipient for federal income tax purposes.

(8) *Employee*. — The term "employee" means:

(A) Any officer of a corporation; or

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

(9) *Compensation*. — Compensation is paid or accrued in this state if:

(A) The employee's service is performed entirely within this state; or

(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within this 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

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

(i) 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

(ii) 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 or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers or other persons or to replenish stock or other materials, repair equipment or perform any other functions necessary to the exercise of his or her 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.

(10) *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 is 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 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.

(11) *Allocation of sales of tangible personal property.* —

(A) 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 the property is ultimately received after all transportation has been completed is the place at which the 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, is delivery to the purchaser in this state and direct delivery outside this state to a person or firm designated by the purchaser is not 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 storage in this state and the purchaser is the United States government.

(B) 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) of this section, shall be excluded from the denominator of the sales factor.

(C) For sales made on or after January 1, 2022, the provisions of paragraph (B) of this subdivision shall no longer apply.

(12) *Allocation of other sales.* — Sales, other than sales of tangible personal property, made before January 1, 2022, are in this state if:

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

(B) 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

(C) 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 §11-24-7b of this code.

(13) *Allocation of other sales beginning 2022 – market-based sourcing*. — Sales, other than sales of tangible personal property, made on or after January 1, 2022, are in this state if:

(A) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(B) In the case of intangible property:

(i) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(ii) That is sold, if and to the extent the property is used in this state, provided that:

(I) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(II) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as sales receipts from the rental, lease or licensing of such intangible property under subparagraph (i) of this paragraph; and

(III) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(14) *Financial organizations and other taxpayers with business activities partially within and partially without this state*. — Notwithstanding anything contained in this section to the contrary, in the case of financial organizations and other taxpayers, not having their commercial domicile in this state, the rules of this subsection apply to the apportionment of income from their business activities except as expressly otherwise provided in §11-24-7b of this code.

(f) *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. The 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 is an income-producing activity.

(g) *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.

(h) *Other methods of allocation and apportionment*. —

(1) *General*. — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may 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 or more 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 income. The 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 the return and the petition shall include a statement of the petitioner's objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with detail and proof as the Tax Commissioner requires.

(2) *Alternative method for public utilities*. — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the Tax Commissioner may require, as an alternative to the other methods provided in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the Public Service Commission of this state pursuant to the provisions of §24-2-8 of this code: *Provided,* That

the allocation and apportionment provisions of the system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) *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 in subdivision (1) or (2) of this subsection is sought, on the grounds that the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof is:

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

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

## §11-24-7a. Special apportionment rules.

(a) General. -- The Legislature hereby finds that the general formula set forth in section seven of this article for apportioning the business income of corporations taxable in this as well as in another state is inappropriate for use by certain businesses due to the particular characteristics of those businesses or the manner in which such businesses are conducted. Accordingly, the general formula set forth in section seven of this article may not be used to apportion business income when a specific formula established under this section applies to the business of the taxpayer. The Legislature further finds that the Tax Commissioner has the authority under chapter eleven of this code to promulgate by legislative regulations special formula or formulae by which a specified classification of taxpayers is required to apportion its business income. Accordingly, this section shall not be construed as prohibiting the Tax Commissioner from exercising his authority to promulgate legislative regulations which set forth such other special formula or formulae and in that regulation requiring a specified classification of taxpayers to apportion their business income as provided in that special formula, instead of apportioning their business income employing the general formula set forth in section seven of this article, when he believes that such formula or formulae will more fairly and more reasonably allocate and apportion to this state the adjusted federal taxable income of the taxpayer. Additionally, nothing in this section shall prevent the Tax Commissioner from requiring the use, or the taxpayer from petitioning to use, as the case may be, some other method of allocation or apportionment as provided in subsection (h), section seven of this article. Permission granted to a taxpayer under subsection (h), section seven of this article to use another method of allocation or apportionment shall be valid for a period of five consecutive taxable years, beginning with the taxable year for which such authorization is granted, provided there is no material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment. Upon expiration of any such authorization the taxpayer may again petition under section seven of this article to use another method of apportionment. A material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment automatically revokes authorization to use that other method beginning with the taxable year in which the material change of fact occurred or the taxable year for which a material change in law first takes effect, whichever occurs first.

(b) Motor carriers. -- Motor carriers of property or passengers shall apportion the business income component of their adjusted federal taxable income to this state by the use of the ratio which their total vehicle miles in this state during the taxable year bears to total vehicle miles of the corporation everywhere during the taxable year, except as otherwise provided in this subsection.

(1) Definitions. -- For purposes of this subsection (b):

(A) "Motor carrier" means any person engaging in the transportation of passengers or property or both, for compensation by motor propelled vehicle over roads in this state, whether traveling on a scheduled route or otherwise.

(B) "Vehicle mile" means the operation of a motor carrier over a distance of one mile, whether owned or operated by a corporation.

(2) The provisions of this subsection (b) shall not apply to a motor carrier:

(A) Which neither owns nor rents real or tangible personal property located in this state, which has made no pick-ups or deliveries within this state, and which has traveled less than fifty thousand vehicle miles in this state during the taxable year; or

(B) Which neither owns nor rents any real or tangible personal property located in this state, except vehicles, and which makes no more than twelve trips into or through this state during a taxable year.

The mileage traveled under fifty thousand miles or the mileage traveled in this state during the twelve trips into or through this state may not represent more than five percent of the total motor vehicle miles traveled in all states during the taxable year.

(c) The manner in which the taxpayer is required or permitted to apportion its business income under this article does not control or otherwise affect how that taxpayer apportions its capital for purposes of the business franchise tax imposed by article twenty-three of this chapter.

(d) Effective date. -- The provisions of this section shall apply to all taxable years beginning on or after January 1, 1989, and to all years that begin prior to that date which are still open to audit and assessment.

## §11-24-7b. Special apportionment rules - financial organizations.

(a) General. -– The Legislature hereby finds that the general formula set forth in section seven of this article for apportioning the business income of corporations 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 seven of this article may not be used to apportion the business income 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. -- The West Virginia taxable income of a financial organization that has its commercial domicile in this state and which is taxable in another state shall be the sum of: (1) The nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided in subsection (d), section seven of this article; plus (2) the business income component of its adjusted federal taxable income for the taxable year which is apportioned to this state as provided in this section.

(c) Out-of-state financial organizations with business activities in this state. -- The West Virginia taxable income of a financial organization that does not have its commercial domicile in this state but which regularly engages in business in this state shall be the sum of: (1) The nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided in subsection (d), section seven of this article; plus (2) the business income component of its adjusted federal taxable income for the taxable year which is apportioned to this state as provided in this section.

(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 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" has same meaning as that term is defined in section three-a 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 the 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;

(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" has the same meaning as that term is defined in section three-a of this article.

(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 (g) of this section, regardless of their source.

(f) Apportionment rules. -- A financial organization which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in section six of this article, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (g) of this section.

(g) 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 of this article.

(1) Numerator. -- The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under section seven of this article, the following:

(A) 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 proposed 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;

(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 proposed 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

(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 the 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.

(h) Effective date. -– The provisions of this section enacted as chapter one hundred sixty-seven, Acts of the Legislature, 1991, shall apply to all taxable years beginning on or after January 1, 1991. Amendments to this section enacted in the year 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.

## §11-24-8. Accounting periods and methods of accounting.

(a) Period of computation of West Virginia taxable income. -- 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.

(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, West Virginia taxable income for purposes of this article shall be computed under such method that in the opinion of the Tax Commissioner clearly reflects such income.

(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 be similarly changed.

(d) Adjustments. -- In computing a taxpayer's West Virginia taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's West Virginia taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Tax Commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

(e) Limitation on additional tax. -- (1) Change other than to installment method. -- If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were rateably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(2) Change From Accrual to Installment Method. -- If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipts of installment payments properly accrued in a prior year shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, under regulations prescribed by the Tax Commissioner.

(f) Application of federal accounting adjustments. -- Notwithstanding any of the other provisions of this section, any accounting adjustments made for federal income tax purposes for any taxable year shall be applied in computing the taxpayer's taxable income for such taxable year.

(g) Taxpayer currently on the installment method of accounting. -- If a taxpayer is using the installment method of accounting at the time of the enactment of this article, any tax for the year of the enactment of this article and for any subsequent year which is attributable to the receipts of installment payments properly accrued in a period prior to the enactment of this article and which were subject to the privilege tax as imposed by article thirteen of chapter eleven of this code shall, under regulations of the Tax Commissioner, be reduced by the portion of such privilege tax previously paid on such receipts.

**§11-24-9. Credits against primary tax; election of taxpayer; expiration of credit.**

(a) Credit for primary taxes imposed under article thirteen, chapter eleven of this code. -- A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: Provided, That the amount of such business and occupation tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the business and occupation tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year, shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its business and occupation tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Credit for taxes imposed under article twelve-a, chapter eleven of this code. -- A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: Provided, That the amount of such credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the carrier income tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its carrier income tax liability for the taxable year, which was taken as a deduction on its federal return for the taxable year.

(c) Expiration of credits. -- The credits, authorized in subsections (a) and (b) of this section, shall expire and not be authorized or allowed for any taxable year beginning after June 30, 1987.

**§11-24-9a. Credits against primary tax; election of taxpayer.**

Credit for primary taxes imposed under article thirteen-a, chapter eleven of this code. -- A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for the severance tax imposed under article thirteen-a, chapter eleven of this code: Provided, That the amount of such severance tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the severance tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year, shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect, in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its severance tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen-a, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen-a computed without reduction for the tax credit for coal loading facilities or for industrial expansion or revitalization allowed for such year.

Expiration of credit. -- The credit authorized in this section shall expire and not be authorized or allowed for any taxable year beginning on or after October 1, 1990.

## §11-24-9b. Limited tax credits - Financial organizations.

(a) Definitions. --

For purposes of this section:

(1) "Adjusted base year tax liability" means the taxpayer's corporation net income tax liability under this article, for the tax year ending immediately on or before December 31, 2008, before application of any surtax, alternative minimum tax or credit allowed, authorized or imposed under this chapter, adjusted by:

(A) Adding the base year liabilities, if any, of affiliates, subsidiaries and related entities that are included in the taxpayer's current year combined report, but which were not included in the taxpayer's base year filing configuration, and

(B) Subtracting the base year liabilities, if any, of affiliates, subsidiaries and related entities that were included in the taxpayer's base year filing configuration, but that are not included in the taxpayer's current year combined report.

(2) "Adjusted primary tax liability" means the current year's liability of the taxpayer under this article before application of any surtax, alternative minimum tax or credit allowed, authorized or imposed under this chapter for the current tax year:

(3) "Financial organization" means a financial organization as defined in section three-a of this article.

(b) Credit authorized. -- A credit shall be allowed against the adjusted primary tax liability of every financial organization under this article, in an amount equal to a portion of the increase in the adjusted primary tax liability of the financial organization under this article for the taxable year, over the amount of the adjusted primary tax liability of the financial organization under this article for the taxable year beginning immediately on or after January 1, 2008. The portion of the increase in the adjusted primary tax liability under this article that shall be allowed as a credit under this section is eighty percent for taxable years beginning on and after January 1, 2009; sixty percent for taxable years beginning on and after January 1, 2010; forty percent for taxable years beginning on and after January 1, 2011; twenty percent for taxable years beginning on and after January 1, 2012; ten percent for taxable years beginning on and after January 1, 2013; and zero percent for taxable years beginning on and after January 1, 2014; Provided, That the credit allowed by this section may not be used to reduce the adjusted primary tax liability of any financial organization under this article in any taxable year below $1,000,000.

## §11-24-9c. Research and development credit against primary tax.

A credit shall be allowed against the primary tax imposed by this article, which shall be the research and development credit as provided in sections three and three-b, article thirteen-d of this chapter for taxable years beginning after December 31, 1988: Provided, That the amount of this credit may not reduce by more than fifty percent the amount of the net tax liability of the taxpayer for the taxable year: Provided, however, That one-tenth of the entire amount of the eligible investment, upon which the credit is predicated pursuant to sections three and three-b, article thirteen-d of this chapter, taken as a deduction in determining its federal taxable income for the taxable year shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect in lieu of claiming the credit allowable by this section to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its eligible investment in research and development for the taxable year, which was taken as a deduction as a deduction on its federal return for such taxable year.

**§11-24-10. Credit for hiring of qualified employees by eligible taxpayers engaged in manufacturing.**

(a) A credit shall be allowed under the provisions of this section against the primary tax liability of the taxpayer under this article to eligible taxpayers who hire qualified employees during the period beginning April 1, 1983, and ending December 31, 1984.

(b) For the purpose of this section, the term "eligible taxpayer" means a taxpayer who:

(1) Is subject to tax liability under section two-b, article thirteen, chapter eleven of this code, relating to business and occupation tax upon the business of manufacturing, compounding or preparing for sale any articles, substances or commodities; and

(2) Hires a qualified employee, as defined herein, during the period beginning April 1, 1983, and ending December 31, 1984; which employee to such employer is not a returning seasonal employee or employee of like type.

(c) For the purpose of this section, the term "qualified employee" means an employee who is hired and employed at a location within this state by an eligible taxpayer for full-time employment, which, for the purposes of this section, means employment for at least one hundred twenty hours per month at a wage equal to, or greater than, the prevailing federal minimum wage and:

(1) At the time he or she is hired, has either exhausted entitlement to unemployment compensation benefits under the provisions of chapter twenty-one-a of this code or would have exhausted such benefits within a period of six weeks from date of employment; or

(2) At the time of employment, he or she is hired so that one or more present employees will not be required to continue working overtime, and with a resultant decrease in the amount of overtime compensation paid by the employer.

(d) The term "qualified employee" does not include a person who displaces an employed individual, other than an individual who is discharged for cause, or does not include an individual employed and who is closely related to a person who owns, directly or indirectly, more than fifty percent of the outstanding stock of the business, or an individual employed and who is closely related to the owner or owners of an unincorporated business.

(e) Notwithstanding any provision of this code to the contrary, the Bureau of Employment Programs shall disclose, upon request, to the State Tax Commissioner or his employees, any wage, benefits or eligibility information with respect to an identified individual which is contained in its records.

(f) The maximum total credits allowed to any eligible taxpayer in all taxable years because of the hiring of any one qualified employee shall be $1,000: Provided, That the amount of the credit allowed by this section in any one taxable year shall be the lesser of either $1,000 for each qualified employee hired in such taxable year or ten percent of the gross wages paid by

the eligible taxpayer to each qualified employee hired in such taxable year: Provided, however, That unused credit for an eligible employee may be carried forward to the next tax year if necessary and until the lesser of either $1,000 for each qualified employee or ten percent of the gross wages paid to the eligible employee during his or her first employment year is taken as a credit by the eligible taxpayer. The credit allowable by this section for a taxable year is not subject to the fifty percent limitation specified in section nine of this article, and any unused credit may be carried over to each of the next three taxable years following the unused credit year until used or forfeited due to lapse of time.

**§11-24-10a. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.**

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed for a matching contribution to a Jumpstart Savings Account made in the taxable year if the account owner is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq*. of this code and the following:

(1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.

(2) The credit allowed by this section may not exceed $5,000 per employee per taxable year.

(3) The employer may not claim the credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

(4) The employer may not claim both the credit and a decreasing modification authorized by §11-21-12m of this code for an amount contributed to an employee's account.

(b) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, or the Tax Commissioner, upon making the contribution.

(c) Conduit Entities Corporation Net Income Tax. —

(1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, or a limited liability company that is treated as a partnership for federal income tax purposes, the credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.

(2) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its corporate partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(3) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(4) The credit allowed under this section must be used in the tax year in which the contribution is made. The credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any unused amount of the credit is forfeited.

(d) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

## §11-24-11. Credit for reducing electric or natural gas or water utility rates for low-income residential customers.

(a) General. — A credit shall be allowed against the primary tax liability of an eligible taxpayer under this article for the cost of providing electric or natural gas or water utility service, or any combination of electric, natural gas or water utility services, at special reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

(b) Definitions. — For purposes of this section, the term:

(1) "Eligible taxpayer" means a utility which has provided electric, natural gas, water, or sewer utility service, or any combination of electric, natural gas, water, or sewer utility services, to qualified low-income residential customers at special reduced rates.

(2) "Cost of providing electric or natural gas or water or sewer utility service, or any combination of electric, or natural gas, or water, or sewer utility services, at special reduced rates" means the amount certified by the Public Service Commission under the provisions of §24-2A-2 of this code, as the revenue deficiency incurred by a public utility in providing special reduced rates for electric or natural gas or water or sewer utility service, or any combination of electric, natural gas or water or sewer utility services, as required by §24-2A-1 of this code or authorized by §24-2A-5 of this code.

(3) "Special reduced rates" means the rates ordered or approved by the Public Service Commission under the authority of §24-2A-1 or §24-2A-5 of this code.

(4) "Qualified low-income residential customers" means those utility customers eligible to receive electric, or natural gas, or water or sewer utility service, or any combination of electric, natural gas, or water or sewer utility services, under special reduced rates.

(c) Amount of credit. —

(1) For tax years beginning prior to January 1, 2019, the amount of the credit available to any eligible taxpayer shall be equal to its cost of providing electric, or natural gas, or water utility service, or any combination of electric, natural gas, or water utility services, at special reduced rates to qualified residential customers, less any reimbursement of said cost which the taxpayer has received through any other means.

(2) For tax years beginning on or after January 1, 2019, the amount of the credit available to any eligible taxpayer shall be equal to its cost of providing electric, or natural gas, or water or sewer utility service, or any combination of electric, natural gas, water or sewer utility services, at special reduced rates to qualified residential customers, less any reimbursement of said cost which the taxpayer has received through any other means.

(d) When credit may be taken. — An eligible taxpayer may claim a credit allowed under this section on its annual return for the taxable year in which it receives certification of the

amount of its revenue deficiency from the Public Service Commission.

Notwithstanding the provisions of §11-24-16 of this code to the contrary, no credit may be claimed on any declaration of estimated tax filed for such taxable year prior to July 1 of such taxable year. Such credit may be claimed on a declaration or amended declaration filed on or after that date but only if the amount certified will not be recovered by application of the business and occupation tax credit allowed by §11-13-3f of this code. In such event, only that amount not recovered by that credit may be considered or taken as a credit when estimating the tax due under this article. In no event may the eligible taxpayer recover more than 100 percent of its revenue deficiency as certified by the Public Service Commission.

(e) Application of credit. — The credit allowable by this section for a taxable year is not subject to the 50 percent limitation specified in §11-24-9 of this code. Notwithstanding the provisions of §11-13F-4 of this code, any unused credit may be carried over and applied against business and occupation taxes in the manner specified in §11-13F-5 of this code.

(f) Copy of certification order. — A copy of a certification order from the Public Service Commission shall be attached to any annual return under this article on which a credit allowed by this section is taken.

## §11-24-11a. Credit for reducing telephone utility rates for low-income residential customers.

(a) General. -- A credit shall be allowed against the primary tax liability of an eligible taxpayer under this article for the cost of providing telephone service at special reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

(b) Definitions. -- For purposes of this section, the term:

(1) "Eligible taxpayer" means a utility which has provided telephone service to qualified low-income residential customers at special reduced rates.

(2) "Cost of providing telephone service at special reduced rates" means the amount certified by the Public Service Commission under the provisions of section two, article two-c, chapter twenty-four of this code, as the revenue deficiency incurred by a telephone utility in providing telephone service at special reduced rates, as required by section one, article two-c, chapter twenty-four of this code.

(3) "Special reduced rates" means the rates ordered by the Public Service Commission under the authority of section one, article two-c, chapter twenty-four of this code.

(4) "Qualified low-income residential customers" means customers eligible to receive telephone service at special reduced rates.

(c) Amount of credit. -- The amount of the credit available to any eligible taxpayer shall be equal to its costs of providing telephone service at special reduced rates to qualified low-income residential customers less any reimbursement of such cost which the taxpayer has received through any other means.

(d) When credit may be taken. -- An eligible taxpayer may claim a credit allowed under this section on its annual return for the taxable year for which it receives certification of the amount of its revenue deficiency from the Public Service Commission.

Notwithstanding the provisions of section sixteen of this article to the contrary, no credit may be claimed on any declaration of estimated tax filed for such taxable year prior to July 1, of such taxable year. Such credit may be claimed on a declaration or amended declaration filed on or after such date, but only if the amount certified will not be recovered by application of the tax credit allowed by article thirteen-g of this chapter. In such event, only that amount not recovered by the tax credit allowed by article thirteen-g of this chapter may be considered or taken as a credit when estimating the tax due under this article. In no event may the eligible taxpayer recover more than one hundred percent of its revenue deficiency as certified by the Public Service Commission.

(e) Application of credit. -- The credit allowable by this section for a taxable year is not subject to the fifty percent limitation specified in section nine of this article.

Notwithstanding the provisions of section four, article thirteen-g of this chapter, any unused credit may be carried over and applied against the eligible taxpayer's tax liability in the manner specified in section five, article thirteen-g of this chapter.

(f) Copy of certification order. -- A copy of the certification order from the Public Service Commission shall be attached to any annual return on which a credit allowed by this section is taken.

## §11-24-11b. Credit for utility taxpayers with net operating loss carryovers.

(a) General. -- There shall be allowed to every eligible taxpayer a nonrefundable credit against its primary tax liability imposed under this article for any net operating loss carryovers that exist as of December 31, 2006.

(b)(1) "Eligible taxpayer" means any person subject to the business and occupation taxes prescribed by article thirteen of this chapter and exercising any privilege taxable under section two-o of this article.

(2) "Eligible taxpayer" also includes an affiliated group of taxpayers if the group elects to file a consolidated corporation net income tax return under this article if one or more affiliates included in the affiliated group would qualify as an eligible taxpayer under subdivision (1) of this subsection.

(c) Amount of credit. -– The amount of credit allowed shall be equal to one-quarter percent of the eligible taxpayer's West Virginia net operating loss carryovers allowed by subsection (d), section six of this article that exist as of December 31, 2006.

(d) Application of credit. -– The amount of credit allowed shall be taken against the tax liabilities of the eligible taxpayer under this article as shown on its annual return for the taxable year in which its net operating loss carryovers are utilized, as provided in subsection (d), section six of this article. Any credit remaining after application against the eligible taxpayer's tax liabilities for the current year may be carried forward to subsequent tax years until used.

## §11-24-12. Military incentive tax credit.

Every employer entitled to receive a tax credit against its West Virginia corporate income tax liability as provided in article two-c, chapter twenty-one-a of this code shall receive the credit for the period and in the amount specified in said article two-c of this chapter. The State Tax Commissioner shall provide by appropriate rule or regulation for the reporting, filing and application of claims for the tax credit provided for in a manner in conformity with the legislative purpose as declared in section two, article two-c, chapter twenty-one-a of this code.

## §11-24-13. Returns; time for filing.

(a) On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article: Provided, That for tax years beginning after December 31, 2015, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article on or before the fifteenth day of the fourth month following the close of a taxable year.

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

(c) The Tax Commissioner may combine into one form the annual return due under this article and the annual return due under article twenty-three of this chapter. When a combined business franchise tax and corporation net income tax annual return is filed by a taxpayer, the amount of tax remitted shall be applied first against any business franchise tax that may be due for the taxable year under said article and then against any corporation net income tax that may be due for the taxable year. The Tax Commissioner may also combine the forms for filing declarations of estimated tax and the forms for making installment payments of estimated tax.

(d) Effective date. -- The amendments to this section made in the year one thousand nine hundred ninety-three shall apply to tax returns that become due after the first day of that year.

## §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:

(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 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. --

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 apportionment of the taxpayer's income.

## §11-24-13b. Information return for corporations electing to be taxed under subchapter S.

Every corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1986, as amended, shall on or before the fifteenth day of the third month following the close of the taxable year file an information return for each tax year providing such information as the Tax Commissioner may prescribe. Corporations failing to file information returns by the due date as prescribed in this section shall be subject to a penalty of $50 for each failure to file, with such penalty being collected as other penalties are collected by the Tax Commissioner: Provided, That for tax years beginning on or after January 1, 1992, the penalty for failure to file an information return shall be determined under section nineteen-a, article ten of this chapter.

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

**§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.

## §11-24-13e. Designation of surety.

As a filing convenience, and without changing the respective liability of the group members, members of a combined reporting group may annually elect to designate one taxpayer member of the combined group to file a single return in the form and manner prescribed by the department, in lieu of filing their own respective returns, provided that the taxpayer designated to file the single return consents to act as surety with respect to the tax liability of all other taxpayers properly included in the combined report and agrees to act as agent on behalf of those taxpayers for the year of the election for tax matters relating to the combined report for that year. If for any reason the surety is unwilling or unable to perform its responsibilities, tax liability may be assessed against the taxpayer members.

**§11-24-13f. Water's-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.**

(a) Water's-edge reporting. --

Absent an election under subsection (b) of this section to report based upon a worldwide unitary combined reporting basis, taxpayer members of a unitary group shall determine each of their apportioned shares of the net business income or loss of the combined group on a water's-edge unitary combined reporting basis. In determining tax under this article and article twenty-three of this chapter on a water's-edge unitary combined reporting basis, taxpayer members shall take into account all or a portion of the income and apportionment factors of only the following members otherwise included in the combined group pursuant to section thirteen-a of this article:

(1) The entire income and apportionment factors of any member incorporated in the United States or formed under the laws of any state, the District of Columbia or any territory or possession of the United States;

(2) The entire income and apportionment factors of any member, regardless of the place incorporated or formed, if the average of its property, payroll and sales factors within the United States is twenty percent or more;

(3) The entire income and apportionment factors of any member which is a domestic international sales corporation as described in Internal Revenue Code Sections 991 to 994, inclusive; a foreign sales corporation as described in Internal Revenue Code Sections 921 to 927, inclusive; or any member which is an export trade corporation, as described in Internal Revenue Code Sections 970 to 971, inclusive;

(4) Any member not described in subdivision (1), (2) or (3) of this subsection shall include its business income which is effectively connected, or treated as effectively connected under the provisions of the Internal Revenue Code, with the conduct of a trade or business within the United States and, for that reason, subject to federal income tax;

(5) Any member that is a "controlled foreign corporation", as defined in Internal Revenue Code Section 957, to the extent of the income of that member that is defined in Section 952 of Subpart F of the Internal Revenue Code (Subpart F income) not excluding lower-tier subsidiaries' distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income; any item of income received by a controlled foreign corporation shall be excluded if such income was subject to an effective rate of income tax imposed by a foreign country greater than ninety percent of the maximum rate of tax specified in Internal Revenue Code Section 11;

(6) Any member that earns more than twenty percent of its income, directly or indirectly, from intangible property or service-related activities that are deductible against the business

income of other members of the water's-edge group, to the extent of that income and the apportionment factors related thereto: Provided, That for purposes of this subdivision, if a corporation organized outside of the United States is included in a water's- edge combined group pursuant to this subdivision, and has an item of income that is exempt from United States federal income tax pursuant to the mandate of a comprehensive income tax treaty qualified under Internal Revenue Code Section 1(h)(11), that corporation shall be considered to be included in the combined group under this subdivision only with regard to any items of income described in this subdivision that are not so exempt, taking into account items of expense and apportionment factors associated with such items of nonexempt income. Nothing in this subdivision prevents the Tax Commissioner from adjusting, under any provision of this article, any deduction claimed by the payer for amounts that are excluded from the combined group's taxable income under this subdivision. The Tax Commissioner may require the reporting of the amounts of such excluded income and the documentation of any claimed treaty exemption as conditions to be met by a payer claiming a deduction of such payments. The Tax Commissioner may issue such legislative, procedural or emergency rules as the Tax Commissioner may deem necessary for the administration of this section; and

(7) The entire income and apportionment factors of any member that is doing business in a tax haven defined as being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States Constitutional standards. If the member's business activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause the jurisdiction to meet the criteria set forth in the definition of a tax haven, the activity of the member shall be treated as not having been conducted in a tax haven.

(b) Initiation and withdrawal of election to report based on worldwide unitary combined reporting. --

(1) An election to report West Virginia tax based on worldwide unitary combined reporting is effective only if made on a timely filed, original return for a tax year by every member of the unitary business subject to tax under this article. The Tax Commissioner shall develop rules governing the impact, if any, on the scope or application of a worldwide unitary combined reporting election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members and any other similar change.

(2) The election shall constitute consent to the reasonable production of documents and taking of depositions in accordance with the provisions of this code.

(3) In the discretion of the Tax Commissioner, a worldwide unitary combined reporting election may be disregarded, in part or in whole, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in or excluded from the combined report without regard to the provisions of this section, if any member of the unitary group fails to comply with any provision of this article.

(4) In the discretion of the Tax Commissioner, the Tax Commissioner may mandate worldwide unitary combined reporting, in part or in whole, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in or excluded from the combined report without regard to the provisions of this section, if any member of the unitary group fails to comply with any provision of this article or if a person otherwise not included in the water's-edge combined group was availed of with a substantial objective of avoiding state income tax.

(5) A worldwide unitary combined reporting election is binding for and applicable to the tax year it is made and all tax years thereafter for a period of ten years. It may be withdrawn or reinstituted after withdrawal, prior to the expiration of the ten-year period, only upon written request for reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes, law or policy and only with the written permission of the Tax Commissioner. If the Tax Commissioner grants a withdrawal of election, he or she shall impose reasonable conditions necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. Upon the expiration of the ten-year period, a taxpayer may withdraw from the worldwide unitary combined reporting election. Withdrawal must be made in writing within one year of the expiration of the election and is binding for a period of ten years, subject to the same conditions as applied to the original election. If no withdrawal is properly made, the worldwide unitary combined reporting election shall be in place for an additional ten-year period, subject to the same conditions as applied to the original election.

(c) For purposes of determining the tax imposed by article twenty-three of this chapter, the term "income", as used in this section, shall be interpreted to mean the tax base or capital, as applicable, for purposes of the tax imposed under article twenty-three of this chapter.

## §11-24-14. Time and place for filing returns and paying tax.

A person required to make and file a return under this article shall pay any tax shown to be due by such return, without assessment, notice or demand, to the Tax Commissioner on or before the date fixed for filing such return determined without regard to any extension of time for filing the return. The Tax Commissioner shall prescribe by regulation the place for filing any return, statement or other document required to be filed by this article and for the payment of any tax.

## §11-24-15. Signing of returns and other documents.

(a) Any return, statement or other document required to be made pursuant to this article shall be filed in accordance with regulations or instructions prescribed by the Tax Commissioner. 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 The fact that a return, statement or other document is signed by an officer of a corporation shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the corporation.

(b) The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this article, including a copy of a federal return, shall constitute a certification by the person, corporation or officer making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

## §11-24-16. Declarations of estimated tax.

(a) Requirement of declaration. -- Every corporation subject to tax under this article shall make a declaration of estimated tax for the taxable year if its West Virginia taxable income can be reasonably expected to exceed $10,000.

(b) Definition of estimated tax. -- The term "estimated tax" means the amount which a corporation estimates to be its income tax under this article for the taxable year, less an amount which such corporation estimates to be the sum of any credits allowable against the tax.

(c) Contents of declaration. -- The declaration shall contain such pertinent information as the Tax Commissioner may by forms or regulations prescribe, including, but not limited to, such detailed information as may be necessary to clearly reflect the estimated West Virginia taxable income of the corporation for the taxable year.

(d) Amendment of declaration. -- A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the Tax Commissioner.

(e) Time for filing declaration. -- If the requirements of subsection (a) are first met before the first day of the fourth month of the taxable year a declaration of estimated tax of a corporation shall be filed on or before the fifteenth day of the fourth month of the taxable year, except that if the requirements of subsection (a) are first met --

(1) After the last day of the third month and before the first day of the sixth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the sixth month of the taxable year, or

(2) After the last day of the fifth month and before the first day of the ninth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the ninth month of the taxable year, or

(3) After the last day of the eighth month and before the first day of the twelfth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the twelfth month of the taxable year.

(f) Declaration of estimated tax of $100 or less. -- A declaration of estimated tax of a corporation having a total estimated tax for the taxable year of $100 or less may be filed at any time on or before the fifteenth day of the first month of the succeeding taxable year under regulations of the Tax Commissioner.

(g) Return as declaration or amendment. -- If on or before the fifteenth day of the second month of the succeeding taxable year a corporation files its return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as such corporation's declaration, if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before the fifteenth day of the first month of the succeeding taxable year.

(2) Such return, if filed on or before such applicable date shall be considered an amendment permitted by subsection (d) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

**§11-24-17. Payments of estimated tax.**

(a) Installment payments. -- The estimated tax of a corporation with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before the fifteenth day of the fourth month of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following fifteenth days of the sixth, ninth and twelfth months of the taxable year, respectively.

(2) If the declaration is filed after the fifteenth day of the fourth month and not after the fifteenth day of the sixth month of the taxable year, and is not required to be filed on or before the fifteenth day of the fourth month of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following fifteenth days of the ninth and twelfth months of the taxable year, respectively.

(3) If the declaration is filed after the fifteenth day of the sixth month and not after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the sixth month of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following fifteenth day of the twelfth month of the taxable year.

(4) If the declaration is filed after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the ninth month of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Amendments of declaration by any corporation. -- If any amendment of a declaration is filed by a corporation, 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, and 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.

(c) 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.

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

**§11-24-17a.**

Repealed. Acts, 1985 Reg. Sess., Ch. 162.

## §11-24-18. Extensions of time.

(a) General. -- The Tax Commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as he may require.

(b) Amount determined as deficiency. -- The Tax Commissioner may, under regulations, extend the time for payment of an amount determined as a deficiency for a period not to exceed eighteen months from the date designated for payment of the deficiency, and under exceptional circumstances, for a further period not to exceed twelve months. An extension under this subsection may be granted only where it is established to the satisfaction of the Tax Commissioner that the payment of a deficiency upon the date designated for payment would result in undue hardship. No extension shall be granted if any part of the deficiency is due to intentional disregard of rules and regulations or to fraud.

(c) Claims in bankruptcy or receivership proceedings. -- Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax.

(d) Furnishing of security. -- If any extension of time is granted for payment of any tax or deficiency, the Tax Commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding the amount for which the extension of time for payment is granted on such terms and conditions as the Tax Commissioner may require.

## §11-24-19. Requirements concerning returns, notices, records and statements.

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

(b) Information at source. -- The Tax Commissioner may prescribe regulations and instructions requiring returns of information to be made by any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(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.

(d) Federal return information. -- As 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.

**§11-24-20. Report of change in federal taxable income.**

(a) Unless the provision of §11-21A-1 et seq. of this code apply, if the amount of a taxpayer's federal taxable income reported on its federal income tax return for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report the change or correction in federal taxable income within 90 days after the final determination of the change, correction or renegotiation, or as otherwise required by the Tax Commissioner, and shall concede the accuracy of the determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within 90 days thereafter an amended return under this article, and shall give such information as the Tax Commissioner may require. The Tax Commissioner may by rule prescribe such exceptions to the requirements of this section as he or she deems appropriate.

(b) (1) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination (as defined in §11-21A-2 of this code), or within the period provided in §11-10-14 of this code, whichever period expires later.

(2) Within two years of the date of the final determination (as defined in §11-21A-2 of this code) or within the period provided in §11-10-14 of this code, whichever period expires later, the Tax Commissioner may allow a credit, make a refund, or mail to the taxpayer a notice of proposed overpayment resulting from the final federal determination.

(c) For the purposes of this section, assessments under a partial agreement, closing agreement covering specific matters, jeopardy or advance payment are considered part of the final determination and must be submitted to the Tax Commissioner with the final determination.

(d) If a partial agreement, a closing agreement covering specific matters, or any other agreement with the United States Treasury Department would be final except for a federal extension still open for flow-through adjustments from other entities or other jurisdictions, the final determination is the date the taxpayer signs the agreement. Flow-through adjustments include, but are not limited to, items of income gain, loss, and deduction that flow through to equity owners of a partnership, or other pass-through entity. Flow-through adjustments are finally determined based on criteria specified in §11-24-20(g) of this code.

(e) The Tax Commissioner is not required to issue refunds based on any agreement other than a final determination.

(f) If a taxpayer has filed an amended federal return, and no corresponding West Virginia amended return has been filed with the Tax Commissioner, then the period of limitations for issuing a notice of assessment shall be reopened and shall not expire until three years from

the date of delivery to the Tax Commissioner by the taxpayer of the amended federal return. However, upon the expiration of the period of limitations as provided in §11-10-15 of this code, then only those specific items of income, deductions, gains, losses, or credits which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing West Virginia income, deductions, gains, losses, credits, and the effect of such adjustments on West Virginia allocations and apportionments.

(g) For the purposes of this section, "final determination" means the appeal rights of both parties have expired or have been exhausted relative to the tax year for federal income tax purposes.

(h) The amendments made to this section in the year 2019 shall apply, without regard to taxable year, to federal determinations that become final on or after the effective date of the amendments to this section in the year 2019.

## §11-24-21. Change of election.

Any election expressly authorized by this article, other than any election expressly stated to be irrevocable, may be changed on such terms and conditions as the Tax Commissioner may prescribe by regulation.

**§11-24-22.**

Repealed.

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

**§11-24-22a. 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 new corporation engaged solely 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 on taxable income which is attributable to the production of value-added products.

(b) Effective for taxable years beginning July 1, 1997, any new corporation engaged solely in the production of value-added products in West Virginia is allowed a tax credit, according to the schedule herein, for every one hour spent by a new permanent, full-time employee training to learn a skill specific to the production of value-added products as defined in article twenty-one, chapter thirty-one of this code. The tax credit is allowed for a maximum of sixty hours, per company, per year.

(c) For purposes of this section, tax credits for hours spent by a new permanent, full-time employee in training is allowed as follows:

(1) Corporations which employ up to five new employees is allowed a tax credit of $2 for every one hour spent by a new employee in training as specified herein;

(2) Corporations which employ between six and twenty-five new employees are allowed a tax credit of $1.50 for every one hour spent by a new employee in training as specified herein;

(3) Corporations which employ between twenty-six and seventy-five new employees are allowed a tax credit of $1.25 for every one hour spent by a new employee in training as specified herein;

(4) Corporations which employ between seventy-six and one hundred and twenty-five new employees are allowed a tax credit of $1 for every one hour spent by a new employee in training as specified herein; and

(5) Corporations which employ more than one hundred twenty-five new employees are allowed a tax credit of 75¢ for every one hour spent by a new employee in training as specified herein.

(d) 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.

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

(f) No credit is available to any taxpayer under this section subsequent to 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.

## §11-24-23. 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.

**§11-24-23a. Credit for qualified rehabilitated buildings investment.**

(a) A credit against the tax imposed by the provisions of this article shall be allowed as follows:

*Certified historic structures*. — For certified historic structures, the credit is equal to 10 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation expenditure: *Provided, however*, That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further*, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq*. of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as “certified historic building”, and further defined as a “qualified rehabilitated building”, as defined under §47(c)(1), Title 26, of the United States Code, as amended.

(b) *Phased rehabilitations*. — Phased rehabilitations are authorized for any rehabilitation completed after July 1, 2022. For certified rehabilitations that may reasonably be expected to be completed in phases set forth in a plan of rehabilitation submitted contemporaneously with the Description of Rehabilitation, which may be amended by the applicant, the state historic preservation officer shall permit phased rehabilitations. A rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. A phased rehabilitation plan shall be consistent with phasing guidance issued by the National Park Service. The state historic preservation officer may review each phase as it is presented, but a phased rehabilitation cannot be designated a certified rehabilitation until all of the phases are completed. The owner may elect to claim the credit allowable for each completed phase of a phased rehabilitation, upon receipt from the state historic preservation officer of a written tax credit certificate, for each phase of the phased

rehabilitation. Written tax credit certificates for completed phases of a phased rehabilitation shall be issued when the substantial rehabilitation test has been satisfied with respect to the completed phase and the completed phase has been placed into service, consistent with phase advisory guidance issued by the National Park Service. Any claims of a tax credit associated with a completed phase of a phased rehabilitation are contingent upon final certification of the completed project. Tax credits claimed by a taxpayer, including, but not limited to, the applicant or a third-party transferee of the tax credit, as applicable, associated with a completed phase of a phased rehabilitation are subject to recapture by the Tax Commissioner if an applicant for tax credits fails to submit an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work, for the rehabilitation within 60 months of the date of the advisory determination by the National Park Service that such phase has been completed in accordance with the Secretary of the Interior standards for rehabilitation.

(c) *Procedure for issuance of tax credits reservations and certificates by the state historic preservation officer —*

(1) Any claim for the tax credits authorized pursuant to this section and §11-21-8a of this code shall be accompanied by a tax credit certificate issued by the state historic preservation officer.

(2) The historic preservation certification application, Part 2 – Description of Rehabilitation, will be reviewed by the State Historic Preservation Office for completion and submitted to the National Park Service for full review. At the time the historic preservation certification application, Part 2 – Description of Rehabilitation, is submitted to the National Park Service, the state historic preservation officer shall send a request for the fee prescribed in subsection (e) of this section to the property owner.

(3) The state historic preservation officer shall issue tax credit certificates for rehabilitation projects that the National Park Service has determined have met the Secretary of the Interior standards for rehabilitation based on the issuance of an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work, or a Phase Advisory Determination.

(d) The state historic preservation officer shall prescribe and publish a form and instructions for an application for issuance of the tax credits authorized by this section and §11-21-8a of this code.

(e) *Application fee* - Each application for tax credits authorized pursuant to this section and §11-21-8a of this code shall require a fee payable to the state historic preservation officer equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such application; and (2) $10,000. The state historic preservation officer shall review and act on all such applications within 30 days of receipt.

Fees collected under this subsection shall be deposited into a special revenue account which

is hereby created. The fund shall be administered by the state historic preservation officer and expended for the purposes of administering the provisions of this section and §11-21-8a of this code.

## §11-24-23b. Definitions.

(a) "Certified historic structure" means any building located in this state that is listed individually in the national register of historic places or located in a registered historic district, reviewed by the West Virginia Division of Culture and History and certified by the national park service as being of historic significance to the district.

(b) "Certified rehabilitation" means any rehabilitation of a certified historic structure that is reviewed by the West Virginia Division of Culture and History, and certified by the national park service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

(c) "Historic district" means any district that is listed in the national register of historic places or designated under a state or local statute which has been certified as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district and which is certified as substantially meeting all of the requirements for listing of districts in the national register of historic places.

(d) "Historic preservation certification application" means application forms published by the national park service, United States department of the interior, Parts 1, 2 and 3, form No. 10-168.

(e) "Secretary of the interior standards" means standards and guidelines adopted and published by the national park service, United States department of the interior, for rehabilitation of historic properties.

(f) "State historic preservation officer" means the state official designated by the Governor pursuant to provisions in the national historic preservation act of 1966, as amended and further defined in section six, article one, chapter twenty-nine of this code.

**§11-24-23c. Procedures.**

Application and processing procedures for provisions of this section shall be the same as any required under provisions of Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1. Successful completion of a historic preservation certification application shall automatically qualify the applicant to be considered for tax credits under this section.

Successful certification by the national park service of a rehabilitation of a building that results in such building being a "qualified rehabilitated building" within the meaning of §47(c)(1), Title 26 of the United States Code, and amendments thereto, shall automatically qualify the applicant for tax credits under this section. The state historic preservation officer's role in the application procedure shall be identical to that in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1.

**§11-24-23d. Standards.**

All standards including the secretary of the interior standards and provisions in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1, that apply to tax credits available from the United States government shall apply to this section as well.

**§11-24-23e. Carryback, carryforward.**

Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section twenty-three-a of this article which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: Provided, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: Provided, however, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section twenty-three a of this article, may not be carried back to any prior taxable year: Provided further, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section twenty-three-a of this article may be carried over to each of the next ten tax years following the first tax year for which the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.

## §11-24-23f. Credit allowed for specific taxable years.

Subject to the provisions of section twenty-three-e of this article, the credit authorized in section twenty-three-a of this article, for investment in a rehabilitated building made by a taxpayer in any taxable year beginning on January 1, 1995, and thereafter, shall be allowed against the tax imposed by this article in the applicable taxable year. The Tax Commissioner shall require disclosure of information regarding the credits allowed in section twenty-three-a of this article in accordance with the provisions of section five-s, article ten of this chapter.

## §11-24-23g. Application of credits.

Effective for taxable years beginning on and after January 1, 2001, the credits granted, pursuant to section twenty-three-a of this article, to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company or multiple owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to an agreement among the shareholders, partners, members or owners documenting an alternative distribution method. Taxpayers eligible for the credits may transfer, sell or assign the credits.

## §11-24-24. Credit for income 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, the business activities of which take place, or are deemed to take place, entirely within 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 net income and was paid with respect to the same taxable year; or

(2) The amount of such tax the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the laws 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.

**§11-24-25.**

Reserved for future use.

## PART III. PROCEDURE AND ADMINISTRATION.

### §11-24-26.

Repealed. Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-27.**

Repealed. Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-28.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-29.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-30.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-31.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-32.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-33.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-34.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-35.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-36.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

**§11-24-37.**

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

## §11-24-38. Deposit of revenue.

(a) Section thirteen of this article authorizes the Tax Commissioner to combine into one form the annual returns due under this article and article twenty-three of this chapter. To facilitate combining returns, reports and declarations for these two taxes, and to allow a taxpayer to pay both taxes with one remittance, the amount of taxes collected under this article and article twenty-three of this chapter, including any additions to tax, penalties or interest collected with respect to such taxes, pursuant to a combined return, report or declaration shall be deposited in one account: Provided, That the Tax Commissioner shall keep such records as may be necessary to separately account for the amount of each tax collected, including additions to tax, penalties or interest collected with respect to each tax, during each fiscal year of the state.

(b) Overpayments of the tax imposed by article twenty-three of this chapter may be applied against tax due under this article for same taxable year, and overpayments of the tax imposed by this article may be applied against underpayment of the tax imposed by article twenty-three of this chapter for the same taxable year.

(c) The provisions of this section shall take effect upon passage.

## §11-24-39. Disposition of revenue.

Pursuant to the Legislature's authority under section 1 of article X of the Constitution of this state, whereby the Legislature is authorized to impose a tax upon incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation incomes below a minimum to be fixed by the Legislature, and whereby revenues so derived may be appropriated as the Legislature may provide, of the revenue collected under this article the State Treasurer shall retain in his hands such amount as the Tax Commissioner may determine to be necessary for refunds to which taxpayers shall be entitled under this article and on or before the tenth day of each month the State Treasurer shall, after reserving such refund amount, pay all interests, penalties and taxes collected under this article, and remaining to his credit in banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the General Fund of the State Treasury.

## §11-24-40. Effective date; severability.

(a) Effective date. -- The provisions of this article shall take effect on July 1, 1967.

(b) 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.

## §11-24-41. 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 twenty-four with like effect as if said act were applicable only to the tax imposed by this article twenty-four and were set forth in extenso in this article twenty-four.

## §11-24-42. Effective date.

The provisions of this article as amended or added by this act enacted in the year 2008 shall apply to all taxable years beginning after December 31, 2008: Provided, That if an effective date is expressly provided in any provision, that specific effective date shall control in lieu of this general effective date provision.

## §11-24-43. Dedication of corporation net income tax proceeds.

(a) There is hereby dedicated for the fiscal years beginning July 1, 2006, 2007 and 2008, an annual amount of $10 million from annual collections of the tax imposed by this article for payment of the unfunded liability created by the one-time supplement of certain annuitants as provided in section twenty-two-i, article ten, chapter five and section twenty-six-t, article seven-a, chapter eighteen of this code.

(b) Notwithstanding any other provision of this code to the contrary, on October 1, 2006, 2007 and 2008, $10 million from collections of the tax imposed by this article shall be deposited with the reserves of the public employees retirement and state Teachers Retirement Systems in such allocations as the Consolidated Public Retirement Board finds to be necessary and advantageous in funding the one-time supplements of certain annuitants as provided in section twenty-two-i, article ten, chapter five and section twenty-six-t, article seven-a, chapter eighteen of this code.

## §11-24-43a. Dedication of tax proceeds to railways.

(a) Beginning January 1, 2008, there is dedicated an annual amount of up to $4,300,000 from annual collections of the tax imposed by this article for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority.

(b) For purposes of administering the deposits required by this subsection, after December 31, 2007, from the taxes imposed by this section and paid to the Tax Commissioner in each quarter of the year, after deducting the amount of any refunds lawfully paid and any administrative costs authorized by this code, the Tax Commissioner shall pay into the Special Railroad and Intermodal Enhancement Fund provided in section seven-a, article sixteen-b, chapter seventeen of this code an amount equal to at least $1,075,000. In any quarter where the collections are less than the amount required to be paid into the Special Railroad and Intermodal Enhancement Fund, or where the total amount paid in any year will be less than $4,300,000, the difference shall be paid from amounts available from collections in succeeding quarters until paid in full. Notwithstanding any provision of this section to the contrary, the total amount to be deposited into the Special Railroad and Intermodal Enhancement Fund for 2013 may not exceed $2,150,000: Provided, That no deposits may be made into the Special Railroad and Intermodal Enhancement Fund during the fiscal year 2014.

(c) Notwithstanding any provision of this section or this code to the contrary, all provisions of this section relating to requiring the deposit of moneys into the Special Railroad and Intermodal Enhancement Fund expire and are void on and after January 1, 2016.

**§11-24-44. Tax credit for employers providing child care for employees.**

(a) *Definition*. —- As used in this section, the term:

(1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate;

(2) “Cost of operation” means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child-care facilities; provided, however, that the term cost of operation shall exclude the cost of any property that is qualified child-care property.

(3) “Department” or “Tax Department” means the West Virginia State Tax Department.

(4) “Employer” means any employer upon whom an income tax is imposed by this article or any employer organized as a nonprofit corporation under Internal Revenue Code § 501(c)(3) or § 501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5 of this code.

(5) “Employer provided” refers to child care offered on the premises of the employer.

(6) “Premises of the employer” refers to any location within the State of West Virginia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child-care property is owned jointly or severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child-care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer.

(7) “Qualified child-care property” means all real property, other than land, and tangible personal property purchased or acquired on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child-care facility, but only if:

(A) The children who use the facility are primarily children of employees of:

(i) The taxpayer and other employers in the event that the child-care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of Section 1504(a) of the Internal Revenue Code; and

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child-care property placed in service prior to taxable years beginning on or after January 1, 2022.

Qualified child-care property includes, but is not limited to, amounts expended on building, improvements, and building improvements and furniture, fixtures, and equipment directly related to the operation of child-care property as defined in this section.

(8) “Recapture amount” means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this section for all taxable years preceding the recapture year, whether or not such credits were used.

(9) ”Recapture event” refers to any disposition of qualified child-care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child-care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer’s trade or business so long as the property is retained in such trade or business as qualified child-care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(10) “Recapture percentage” refers to the applicable percentage set forth in the following table:

If the recapture event occurs within-The recapture percentage is:

Five full years after the qualified child-care property is

placed in service .....100

The sixth full year after the qualified child-care property is

placed in service .....90

The seventh full year after the qualified child-care property

is placed in service .....80

The eighth full year after the qualified child-care property is

placed in service .....70

The ninth full year after the qualified child-care property is

placed in service .....60

The tenth full year after the qualified child-care property is

placed in service .....50

The eleventh full year after the qualified child-care property

is placed in service .....40

The twelfth full year after the qualified child-care property

is placed in service .....30

The thirteenth full year after the qualified child-care

property is placed in service .....20

The fourteenth full year after the qualified child-care

property is placed in service .....10

Any period after the close of the fourteenth full year after

the qualified child-care property is placed in service .....0

(11) "Recapture year" means the taxable year in which a recapture event occurs with respect to qualified child-care property.

(b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child-care property and for each of the ensuing four taxable years following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified child-care property jointly owned by two or more unaffiliated employers, each employer's credit is limited to that employer's respective investment in the qualified child-care property.

(c) *Limitations on capital investment credit.* — The tax credit allowable under subsection (b) of this section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit allowed under subsection (b) of this section, when combined with any such tax credit allowed under subsection (e) of this section, including any carryover of such credits from a prior taxable year, exceed 100 percent of the taxpayer's income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer's West Virginia income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child-care facility;

(B) The amount of qualified child-care property acquired during the taxable year and the cost of such property;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified child-care property acquired in prior taxable years and the cost of such property;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried forward to subsequent tax years; and

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(d) *Recapture of credit*. — If a recapture event occurs with respect to qualified child-care property:

(1) The credit otherwise allowable under subsection (b) of this section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (b) of this section shall be recaptured as follows:

(A) Any carryover attributable to such credits pursuant to subdivision (1) of subsection (c) of this section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the

recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account pursuant to paragraph (A) of this subdivision; and

(C) The tax imposed pursuant to this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A) and (B) of this subdivision, as applicable.

(e) *Credit for operating costs*. — In addition to the tax credit provided under subsection (b) of this section, a tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 50 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(f) *Limitations on credit for operating costs*. — The tax credit allowed under subsection (e) of this section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) of this section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the taxable year as determined without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child-care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this section.

(g) *Transferrable credit available to non-profit corporations*. — In the case of non-profit corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated under the provisions of this section shall be available as a transferrable credit that may be transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3) of this code. The Tax Department shall within 90 days certify the amount of transferrable credit available to be transferred, sold, or assigned to another taxpayer. Any transferee, purchaser, or assignee of non-profit corporation credits certified to a non-profit corporation under this section takes the transferred, purchased, or assigned credits subject to any limitations placed on the amount of credit taken in a given year by §11-24-44(b), §11-24-44(c), §11-24-44(e), and §11-24-44(f) of this code.

(h) *Rules*. — The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the commissioner deems to be useful or necessary to carry out the

purpose of this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.