

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-24-87

Time _____

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



ENROLLED

HOUSE BILL No. 931

(By Mr. Tompkins)



Passed April 4, 1981

In Effect July 1, 1981 ~~Passage~~



ENROLLED

H. B. 931

(By MR. TOMPKINS)

[Passed April 4, 1981; in effect July 1, 1981.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to adoption of the multistate tax compact; setting forth certain legislative findings; defining terms used in said compact; relating as to such compact to: purposes of this compact; elements of income tax laws including optional three-factor formula for apportionment of net income and a short form tax return; uniform rules for division of income and for such purpose providing for: definitions, allocation of nonbusiness income, apportionment of business income, and other methods of allocation and apportionment; use tax credit for sales tax lawfully paid to another state; recognition of sales tax exemption certificates authorized by another state; creation of the multistate tax commission, its organization and management; representation of political subdivisions of this state; voting by commission members; official seal; meetings and notice of meetings; election of officers; appointment of executive director; bonding of officers and employees; appointment and discharge of employees of the commission; services of personnel from governmental entities; donations and grants; establishment of offices; bylaws of commission; annual report of commission to governor and Legislature of each member state; committees of the commission; powers of the multistate tax commission; budget and finance; apportionment of commission's budget to each member state; prohibition against pledging the credit of any member state; books and

records; inspection of books and records; promulgation of uniform regulations and forms; interstate audits; subpoena and subpoena duces tecum; confidentiality of audit information; arbitration of disputes concerning apportionment and allocation of income and for such purpose providing for: creation of an arbitration panel, composition of arbitration board, meetings of the board, notice of hearings, powers of the board, expenses of arbitration, determinations of the board and their finality, filing and publishing of determinations, rules of procedure and written compromises; procedure for joining the multistate tax compact and withdrawal therefrom; transition rules on withdrawal of membership; effect of this compact on other laws and jurisdiction of courts; construction and severability of this article; providing for the tax commissioner or an alternate designated by him to represent this state on the commission and representation of political subdivisions of this state; creating the multistate tax compact advisory committee; providing for appropriation of membership dues and audit fees; and establishing effective date and transition rules.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-a, to read as follows:

ARTICLE 10A. MULTISTATE TAX COMPACT.

§11-10A-1. Legislative findings.

1 The Legislature hereby finds and declares that the adoption
2 by this state of the multistate compact will (1) simplify the
3 problem which multistate and multinational businesses en-
4 counter in complying with the tax laws of this state, and (2)
5 promote efficiency and uniformity of application in the ad-
6 ministration of the tax laws. The Legislature does therefore
7 declare that this article be construed so as to accomplish
8 the foregoing purposes.

§11-10A-2. Short title; arrangement and classification.

1 This article may be cited as the "multistate tax compact" no
2 inference, implications or presumptions of legislative construc-
3 tion may be drawn on or made by reasons of the location or

4 grouping of any particular section or provision or portion of
5 this article, and no legal effect may be given to any descriptive
6 matter or headings relating to any part, section, subsection or
7 paragraph of this article.

§11-10A-3. Ratification of compact; joined with other states; and effective date.

1 The “multistate tax compact” is hereby codified in sections
2 four through seventeen of this article, is hereby approved,
3 ratified and adopted by this state and entered into with all
4 jurisdictions legally joining therein in the form substantially as
5 provided in sections four through seventeen of this article.

§11-10A-4. Purposes.

1 The purposes of this compact are to:

2 (a) Facilitate proper determination of state and local tax
3 liability of multistate taxpayers, including the equitable appor-
4 tionment of tax bases and settlement of apportionment dis-
5 putes.

6 (b) Promote uniformity or compatibility in significant com-
7 ponents of tax systems.

8 (c) Facilitate taxpayer convenience and compliance in the
9 filing of tax returns and in other phases of tax administration.

10 (d) Avoid duplicative taxation.

§11-10A-5. Definitions.

1 As used in this article, the terms:

2 (a) “Capital stock tax” means a tax measured in any way
3 by the capital of a corporation considered in its entirety.

4 (b) “Gross receipts tax” means a tax, other than a sales
5 tax, which is imposed on or measured by the gross volume of
6 business, in terms of gross receipts or in other terms, and in
7 the determination of which no deduction is allowed which
8 would constitute the tax an income tax.

9 (c) “Income tax” means a tax imposed on or measured by
10 net income including any tax imposed on or measured by an
11 amount arrived at by deducting expenses from gross income,

12 one or more forms of which expenses are not specifically and
13 directly related to particular transactions.

14 (d) "Sales tax" means a tax imposed with respect to the
15 transfer for a consideration of ownership, possession or cus-
16 tody of tangible personal property or the rendering of services
17 measured by the price of the tangible personal property trans-
18 ferred or services rendered and which is required by state or
19 local law to be separately stated from the sales price by the
20 seller, or which is customarily separately stated from the sales
21 price, but does not include a tax imposed exclusively on the
22 sale of a specifically identified commodity or article or class of
23 commodities or articles.

24 (e) "State" means a state of the United States, the District
25 of Columbia, the Commonwealth of Puerto Rico or any
26 territory or possession of the United States.

27 (f) "Subdivision" means any governmental unit or special
28 district of a state.

29 (g) "Tax" means an income tax capital stock tax, gross
30 receipts tax, sales tax, use tax and any other tax which has
31 a multistate impact, except that the provisions of sections six,
32 seven and eight of this article shall apply only to the taxes
33 specifically designated therein and the provisions of section
34 twelve of this compact shall apply only in respect to deter-
35 minations pursuant to section seven.

36 (h) "Taxpayer" means any corporation, partnership, firm,
37 association, governmental unit or agency or person acting as
38 a business entity in more than one state.

39 (i) "Use tax" means a nonrecurring tax, other than a sales
40 tax, which (1) is imposed on or with respect to the exercise or
41 enjoyment of any right or power over tangible personal prop-
42 erty incident to the ownership, possession or custody of that
43 property or the leasing of that property from another in-
44 cluding any consumption, keeping, retention or other use of
45 tangible personal property and (2) is complementary to a
46 sales tax.

§11-10A-6. Elements of income tax laws.

1 (a) *Taxpayer option, state and local income taxes.*—
2 Any taxpayer subject to an income tax whose income is
3 subject to apportionment and allocation for tax purposes
4 pursuant to the laws of a party state or pursuant to the
5 laws of subdivisions in two or more party states may elect
6 to apportion and allocate his income in the manner provided
7 by the laws of such state or by the laws of such states and
8 subdivisions without reference to this compact, or may elect
9 to apportion and allocate in accordance with section seven
10 of this article. This election for any tax year may be made
11 in all party states or subdivisions thereof or in any one or
12 more of the party states or subdivisions thereof without
13 reference to the election made in the others. For the pur-
14 poses of this subsection, taxes imposed by subdivisions shall
15 be considered separately from state taxes and the appor-
16 tionment and allocation also may be applied to the en-
17 tire tax base. In no instance wherein section seven is em-
18 ployed for all subdivisions of a state may the sum of all
19 apportionments and allocations to subdivisions within a state
20 be greater than the apportionment and allocation that would
21 be assignable to that state if the apportionment or allocation
22 were being made with respect to a state income tax.

23 (b) *Taxpayer option, short form.*—Each party state or
24 any subdivision thereof which imposes an income tax shall
25 provide by law that any taxpayer required to file a return,
26 whose only activities within the taxing jurisdiction consist
27 of sales and do not include owning or renting real estate or
28 tangible personal property, and whose dollar volume of gross
29 sales made during the tax year within the state or sub-
30 division, as the case may be, is not in excess of one hundred
31 thousand dollars may elect to report and pay any tax due
32 on the basis of a percentage of such volume, and shall
33 adopt rates which shall produce a tax which reasonably
34 approximates the tax otherwise due. The multistate tax com-
35 mission, not more than once in five years, may adjust the
36 figure in order to reflect such changes as may occur in the
37 real value of the dollar, and such adjusted figure, upon
38 adoption by the commission, shall replace the figure spe-

39 cifically provided herein. Each party state and subdivision
40 thereof may make the same election available to taxpayers
41 additional to those specified in this subsection.

42 (c) *Coverage*.—Nothing in this section relates to the re-
43 porting or payment of any tax other than an income tax.

§11-10A-7. Division of income.

1 (a) *Definitions*.—As used in this section, unless the con-
2 text otherwise requires:

3 (1) “Business income” means income arising from trans-
4 actions and activity in the regular course of the taxpayer’s
5 trade or business and includes income from tangible and
6 intangible property if the acquisition, management and dis-
7 position of the property constitute integral parts of the tax-
8 payer’s regular trade or business operations.

9 (2) “Commercial domicile” means the principal place from
10 which the trade or business of the taxpayer is directed or
11 managed.

12 (3) “Compensation” means wages, salaries, commissions
13 and any other form of remuneration paid to employees for
14 personal services.

15 (4) “Financial organization” means any bank, trust com-
16 pany, savings bank, industrial bank, land bank, safe deposit
17 company, private banker, savings and loan association, credit
18 union, cooperative bank, small loan company, sales finance
19 company, investment company or any type of insurance com-
20 pany.

21 (5) “Nonbusiness income” means all income other than
22 business income.

23 (6) “Public utility” means any business entity (a) which
24 owns or operates any plant, equipment, property, franchise
25 or license for the transmission of communications, transpor-
26 tation of goods or persons, except by pipeline, or the produc-
27 tion, transmission, sale, delivery or furnishing of electricity,
28 water or steam; and (b) whose rates of charges for goods
29 or services have been established or approved by a federal,
30 state or local government or governmental agency.

31 (7) "Sales" means all gross receipts of the taxpayer not
32 allocated under paragraphs of this section.

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

37 (9) "This state" means the state in which the relevant tax
38 return is filed or, in the case of application of this section to
39 the apportionment and allocation of income for local tax
40 purposes, the subdivision or local taxing district in which the
41 relevant tax return is filed.

42 (b) *Income from multistate activity.*—Any taxpayer having
43 income from business activity which is taxable both within and
44 without this state, other than activity as a financial organi-
45 zation or public utility or the rendering of purely personal
46 services by an individual, shall allocate and apportion his net
47 income as provided in this section. If a taxpayer has income
48 from business activity as a public utility but derives the
49 greater percentage of his income from activities subject to this
50 section, the taxpayer may elect to allocate and apportion his
51 entire net income as provided in this section.

52 (c) *"Taxable in another state" defined.*—For purposes of
53 allocation and apportionment of income under this section, a
54 taxpayer is taxable in another state if (1) in that state he is
55 subject to a net income tax, a franchise tax measured by net
56 income, a franchise tax for the privilege of doing business or
57 a corporate stock tax, or (2) that state has jurisdiction to
58 subject the taxpayer to a net income tax regardless of whether,
59 in fact, the state does or does not.

60 (d) *Allocation of nonbusiness income.*—Rents and royal-
61 ties from real or tangible personal property, capital gains,
62 interest, dividends or patent or copyright royalties, to the
63 extent that they constitute nonbusiness income, shall be allo-
64 cated as provided in paragraphs (1) through (4) of this sub-
65 section.

66 (1) *Net rents and royalties.*—

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

69 (B) Net rents and royalties from tangible personal property
70 are allocable to this state: (i) if and to the extent that the
71 property is utilized in this state, or (ii) in their entirety if the
72 taxpayer's commercial domicile is in this state and the tax-
73 payer is not organized under the laws of or taxable in the
74 state in which the property is utilized.

75 (C) The extent of utilization of tangible personal property
76 in a state is determined by multiplying the rents and royalties
77 by a fraction, the numerator of which is the number of days
78 of physical location of the property in the state during the
79 rental or royalty period in the taxable year and the denomina-
80 tor of which is the number of days of physical location of the
81 property everywhere during all rental or royalty periods in the
82 taxable year. If the physical location of the property during the
83 rental or royalty period is unknown or unascertainable by the
84 taxpayer, tangible personal property is utilized in the state in
85 which the property was located at the time the rental or royalty
86 payer obtained possession.

87 (2) *Capital gains.*—

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

90 (B) Capital gains and losses from sales of tangible personal
91 property are allocable to this state if (i) the property had a
92 situs in this state at the time of the sale, or (ii) the taxpayer's
93 commercial domicile is in this state and the taxpayer is not
94 taxable in the state in which the property had a situs.

95 (C) Capital gains and losses from sales of intangible per-
96 sonal property are allocable to this state if the taxpayer's com-
97 mercial domicile is in this state.

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

100 (4) *Patent and copyright royalties.*—

101 (A) Patent and copyright royalties are allocable to this
102 state: (i) if and to the extent that the patent or copyright is

103 utilized by the payer in this state, or (ii) if and to the extent
104 that the patent copyright is utilized by the payer in a state
105 in which the taxpayer is not taxable and the taxpayer's com-
106 mercial domicile is in this state.

107 (B) A patent is utilized in a state to the extent that it is
108 employed in production, fabrication, manufacturing or other
109 processing in the state or to the extent that a patented product
110 is produced in the state. If the basis of receipts from patent
111 royalties does not permit allocation to states or if the account-
112 ing procedures do not reflect states of utilization, the patent
113 is utilized in the state in which the taxpayer's commercial
114 domicile is located.

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

121 (e) *Apportionment of business income.*—All business in-
122 come shall be apportioned to this state by multiplying the in-
123 come by a fraction, the numerator of which is the property
124 factor plus the payroll factor plus the sales factor, and the
125 denominator of which is three.

126 (f) *Property factor.*—The property factor is a fraction, the
127 numerator of which is the average value of the taxpayer's real
128 and tangible personal property owned or rented and used in
129 this state during the tax period and the denominator of which
130 is the average value of all the taxpayer's real and tangible per-
131 sonal property owned or rented and used during the tax period.

132 (g) *Value of property.*—Property owned by the taxpayer
133 is valued at its original cost. Property rented by the taxpayer
134 is valued at eight times the net annual rental rate. Net annual
135 rental rate is the annual rental rate paid by the taxpayer less
136 any annual rental rate received by the taxpayer from sub-
137 rentals.

138 (h) *Average value of property.*—The average value of
139 property shall be determined by averaging the values at the

140 beginning and ending of the tax period but the tax adminis-
141 trator may require the averaging of monthly values during the
142 tax period if reasonably required to reflect properly the aver-
143 age value of the taxpayer's property.

144 (i) *Payroll factor*.—The payroll factor is a fraction, the
145 numerator of which is the total amount paid in this state dur-
146 ing the tax period by the taxpayer for compensation and the
147 denominator of which is the total compensation paid every-
148 where during the tax period.

149 (j) *Compensation*.—Compensation is paid in this state if:
150 (1) The individual's service is performed entirely within
151 the state;

152 (2) The individual's service is performed both within and
153 without the state, but the service performed without the state
154 is incidental to the individual's service within the state; or

155 (3) Some of the service is performed in the state and (A) the
156 base of operations or, if there is no base of operations, the
157 place from which the service is directed or controlled is in the
158 state, or (B) the base of operations or the place from which
159 the service is directed or controlled is not in any state in
160 which some part of the service is performed, but the indivi-
161 dual's residence is in this state.

162 (k) *Sales factor*.—The sales factor is a fraction, the num-
163 erator of which is the total sales of the taxpayer in this state
164 during the tax period, and the denominator of which is the
165 total sales of the taxpayer everywhere during the tax period.

166 (1) *Allocation of sales of tangible personal property*.—
167 Sales of tangible personal property are in this state if:

168 (1) The property is delivered or shipped to a purchaser,
169 other than the United States government, within this state re-
170 gardless of the f.o.b. point or other conditions of the sale; or

171 (2) The property is shipped from an office, store, ware-
172 house, factory or other place of storage in this state and (A)
173 the purchaser is the United States government or (B) the tax-
174 payer is not taxable in the state of the purchaser.

175 (m) *Allocation of other sales.*—Sales, other than sales
176 of tangible personal property, are in this state if:

177 (1) The income-producing activity is performed in this
178 state; or

179 (2) The income-producing activity is performed both in and
180 outside this state and a greater proportion of the income-
181 producing activity is performed in this state than in any other
182 state, based on costs of performance.

183 (n) *Other methods of allocation and apportionment.*—If
184 the allocation and apportionment provisions of this section
185 do not fairly represent the extent of the taxpayer's business
186 activity in this state, the taxpayer may petition for or the tax
187 commissioner may require, in respect to all or any part of the
188 taxpayer's business activity, if reasonable:

189 (1) Separate accounting;

190 (2) The exclusion of any one or more of the factors;

191 (3) The inclusion of one or more additional factors which
192 will fairly represent the taxpayer's business activity in this
193 state; or

194 (4) The employment of any other method to effectuate an
195 equitable allocation and apportionment of the taxpayer's in-
196 come.

§11-10A-8. Elements of sales and use taxes.

1 (a) *Use tax credit.*—Each purchaser liable for a use tax
2 on tangible personal property shall be entitled to full credit for
3 the combined amount or amounts of legally imposed sales or
4 use taxes paid by him with respect to the same property to
5 another state and any subdivision thereof. The credit shall
6 be applied first against the amount of any use tax due the
7 state, and any unused portion of the credit shall then be
8 applied against the amount of any use tax due a subdivision.

9 (b) *Sales tax exemption certificates; vendors may rely.*
10 —Whenever a vendor receives and accepts in good faith from
11 a purchaser a resale or other exemption certificate or other
12 written evidence of exemption authorized by the appropriate

13 state or subdivision taxing authority, the vendor shall be
14 relieved of liability for a sale or use tax with respect to the
15 transaction.

§11-10A-9. Multistate tax commission; organization and management.

1 (a) *General.*—The multistate tax commission is hereby
2 established. It shall be composed of one “member” from each
3 party state who shall be the head of the state agency
4 charged with the administration of the type of taxes to
5 which this article applies. If there is more than one such
6 agency the state shall provide by law for the selection of
7 the commission member from the heads of the relevant
8 agencies. State law may provide that a member of the
9 commission be represented by an alternate but only if there
10 is on file with the commission written notification of the
11 designation and identity of the alternate. The attorney
12 general of each party state or his designee, or other
13 counsel if the laws of the party state specifically provide,
14 shall be entitled to attend the meetings of the commission,
15 but shall not vote. Such attorneys general, designees or other
16 counsel shall receive all notices of meetings required under
17 subsection (e) of this section.

18 (b) *Representation of subdivisions.*—Each party state
19 shall provide by law for the selection of representatives from
20 its subdivisions affected by this compact to consult with the
21 commission member from that state.

22 (c) *Voting.*—Each member shall be entitled to one vote.
23 The commission shall not act unless a majority of the mem-
24 bers are present, and no action shall be binding unless approved
25 by a majority of the total number of members.

26 (d) *Official seal.*—The commission shall adopt an official
27 seal to be used as it may provide.

28 (e) *Meetings and notice of meetings.*—The commission
29 shall hold an annual meeting and such other regular meetings
30 as its bylaws may provide and such special meetings as its
31 executive committee may determine. The commission bylaws
32 shall specify the dates of the annual and any other regular

33 meetings, and shall provide for the giving of notice of annual,
34 regular and special meetings. Notices of special meetings shall
35 include the reasons therefor and an agenda of the items to be
36 considered.

37 (f) *Election of officers; appointment of executive director;*
38 *bonding.*—The commission shall elect annually, from among
39 its members, a chairman, a vice chairman and a treasurer.
40 The commission shall appoint an executive director who shall
41 serve at its pleasure and it shall fix his duties and compensa-
42 tion. The executive director shall be secretary of the com-
43 mission. The commission shall make provision for the bond-
44 ing of such of its officers and employees as it may deem ap-
45 appropriate.

46 (g) *Employees of commission.*—Irrespective of the civil
47 service, personnel or other merit system laws of any party
48 state, the executive director shall appoint or discharge such
49 personnel as may be necessary for the performance of the
50 functions of the commission and shall fix their duties and
51 compensation. The commission bylaws shall provide for per-
52 sonnel policies and programs.

53 (h) *Services of personnel from governmental entities.*—
54 The commission may borrow, accept or contract for the
55 services of personnel from any state, the United States or any
56 other governmental entity.

57. (i) *Donations and grants.*—The commission may accept
58 for any of its purposes and functions any donations and grants
59 of money, equipment, supplies, materials and services, con-
60 ditional or otherwise, from any governmental entity, and may
61 utilize and dispose of the same.

62 (j) *Offices.*—The commission may establish one or more
63 offices for the transaction of its business.

64 (k) *Bylaws.*—The commission shall adopt bylaws for
65 the conduct of its business. The commission shall publish
66 its bylaws in convenient form, and shall file a copy of the
67 bylaws and any amendments thereto with the appropriate
68 agency or officer in each of the party states.

69 (l) *Annual report to governor and legislature.*—The com-

70 mission annually shall make to the governor and legislature
71 of each party state a report covering its activities for the
72 preceding year. Any donation or grant accepted by the com-
73 mission or services borrowed shall be reported in the annual
74 report of the commission, and shall include the nature, amount
75 and conditions, if any, of the donation, gift, grant or services
76 borrowed and the identity of the donor or lender. The com-
77 mission may make additional reports as it may deem desirable.

§11-10A-10. Committees of the multistate tax commission.

1 (a) *Executive committee.*—To assist in the conduct of its
2 business when the full commission is not meeting, the com-
3 mission shall have an executive committee of seven members,
4 including the chairman, vice chairman, treasurer and four
5 other members elected annually by the commission. The
6 executive committee, subject to the provisions of this compact
7 and consistent with the policies of the commission, shall
8 function as provided in the bylaws of the commission.

9 (b) *Advisory and technical committees.*—The commis-
10 sion may establish advisory and technical committees,
11 membership on which may include private persons and pub-
12 lic officials, in furthering any of its activities. Such
13 committees may consider any matter of concern to the
14 commission, including problems of special interest to any
15 party state and problems dealing with particular types of
16 taxes.

17 (c) *Additional committees.*—The commission may estab-
18 lish such additional committees as its bylaws may provide.

§11-10A-11. Powers of the multistate tax commission.

1 In addition to powers conferred elsewhere in this compact,
2 the commission shall have power to:

3 (a) Study state and local tax systems and particular
4 types of state and local taxes.

5 (b) Develop and recommend proposals for an increase in
6 uniformity or compatibility of state and local tax laws with
7 a view toward encouraging the simplification and improvement
8 of state and local tax law administration.

9 (c) Compile and publish information as in its judgment
 10 would assist the party states in implementation of the com-
 11 pact and taxpayers in complying with state and local tax
 12 laws.

13 (d) Do all things necessary and incidental to the ad-
 14 ministration of its functions pursuant to this compact.

§11-10A-12. Budget finance; books and records.

1 (a) *Annual budget.*—The commission shall submit to the
 2 governor or designated officer or officers of each party state
 3 a budget of its estimated expenditures for such period as
 4 may be required by the laws of that state for presentation to
 5 the legislature thereof.

6 (b) *State's share.*—Each of the commission's budgets
 7 of estimated expenditures shall contain specific recommenda-
 8 tions of the amounts to be appropriated by each of the party
 9 states. The total amount of appropriations requested under
 10 any such budget shall be apportioned among the party
 11 states as follows: One tenth in equal shares; and the remainder
 12 in proportion to the amount of revenue collected by each
 13 party state and its subdivisions from income taxes, capital
 14 stock taxes, gross receipts taxes, sales and use taxes. In deter-
 15 mining such amounts, the commission shall employ such avail-
 16 able public sources of information as, in its judgment, present
 17 the most equitable and accurate comparisons among the party
 18 states. Each of the commission's budgets of estimated ex-
 19 penditures and requests for appropriations shall indicate the
 20 sources used in obtaining information employed in applying
 21 the formula contained in this subsection.

22 (c) *Credit of state not to be pledged.*—The commission
 23 shall not pledge the credit of any party state. The commis-
 24 sion may meet any of its obligations in whole or in part
 25 with funds available to it under subsection (i), section eight
 26 of the article: *Provided*, That the commission takes specific
 27 action setting aside such funds prior to incurring any obliga-
 28 tion to be met in whole or in part in such manner. Except
 29 where the commission makes use of funds available to it under
 30 subsection (i), section fourteen, the commission shall not

31 incur any obligation prior to the allotment of funds by the
32 party states adequate to meet the same.

33 (d) *Books and records.*—The commission shall keep ac-
34 curate accounts of all receipts and disbursements. The receipts
35 and disbursements of the commission shall be subject to the
36 audit and accounting procedures established under its bylaws.
37 All receipts and disbursements of funds handled by the com-
38 mission shall be audited yearly by a certified or licensed
39 public accountant and the report of the audit shall be included
40 in and become part of the annual report of the commission.

41 (e) *Inspection of books and records.*—The accounts of
42 the commission shall be open at any reasonable time for
43 inspection by duly constituted officers of the party states
44 and by any persons authorized by the commission.

45 (f) *Audits.*—Nothing contained in this section shall be
46 construed to prevent commission compliance with laws relating
47 to audit or inspection of accounts by or on behalf of any
48 government contributing to the support of the commission.

§11-10A-13. Uniform regulations and forms.

1 (a) *General.*—Whenever any two or more party states,
2 or subdivisions of party states, have uniform or similar
3 provisions of law relating to an income tax, capital stock
4 tax, gross receipts tax, sales or use tax, the commission
5 may adopt uniform regulations for any phase of the ad-
6 ministration of such law, including assertion of jurisdiction
7 to tax, or prescribing uniform tax forms. The commission
8 may also act with respect to the provisions of section seven
9 of this article.

10 (b) *Public hearing.*—Prior to the adoption of any regula-
11 tion, the commission shall:

12 (1) As provided in its bylaws, hold at least one public
13 hearing on due notice to all affected party states and sub-
14 divisions thereof and to all taxpayers and other persons who
15 have made timely request of the commission for advance
16 notice of its regulation-making proceedings.

17 (2) Afford all affected party states and subdivisions and

18 interested persons an opportunity to submit relevant written
 19 data and views, which shall be considered fully by the com-
 20 mission.

21 (c) *Adoption by member states.*—The commission shall
 22 submit any regulations adopted by it to the appropriate of-
 23 ficials of all party states and subdivisions to which they
 24 might apply. Each such state and subdivision shall consider
 25 any such regulation for adoption in accordance with its own
 26 laws and procedures.

§11-10A-14. Interstate audits.

1 (a) *General.*—This article shall be in force only in those
 2 party states that specifically provide therefor by statute. Any
 3 party state or subdivision thereof desiring to make or partici-
 4 pate in an audit of any accounts, books, papers, records or
 5 other documents may request the commission to perform the
 6 audit on its behalf. In responding to the request, the commis-
 7 sion shall have access to and may examine, at any reasonable
 8 time, such accounts, books, papers, records and other docu-
 9 ments and any relevant property or stock of merchandise. The
 10 commission may enter into agreements with party states or
 11 their subdivisions for assistance in performance of the audit.
 12 The commission shall make charges, to be paid by the state or
 13 local government or governments for which it performs the
 14 service, for any audits performed by it in order to reimburse
 15 itself for the actual costs incurred in making the audit.

16 (b) *Attendance of persons.*—The commission may re-
 17 quire the attendance of any person within the state where
 18 it is conducting an audit or part thereof at a time and place
 19 fixed by it within such state for the purpose of giving testimony
 20 with respect to any account, book, paper, document, other
 21 record, property or stock of merchandise being examined in
 22 connection with the audit. If the person is not within the
 23 jurisdiction, he may be required to attend for such purpose at
 24 any time and place fixed by the commission within the state
 25 of which he is a resident: *Provided*, That such state has
 26 adopted this section.

27 (c) *Subpoena.*—The commission may apply to any court
 28 of record in West Virginia having power to issue compulsory

29 process for orders in aid of its powers and responsibilities pur-
30 suant to this section and any and all such courts shall have
31 jurisdiction to issue such orders. Failure of any person to obey
32 any such order shall be punishable as contempt of the issuing
33 court. If the party or subject matter on account of which the
34 commission seeks an order is within the jurisdiction of the court
35 to which application is made, such application may be to
36 a court in the state or subdivision on behalf of which the
37 audit is being made or a court in the state in which the
38 object of the order being sought is situated. The provisions
39 of this subsection apply only to courts in a state that has
40 adopted this section.

41 (d) *Refusal to perform audit.*—The commission may de-
42 cline to perform any audit requested if it finds that its available
43 personnel or other resources are insufficient for the purpose or
44 that, in the terms requested, the audit is impracticable for
45 satisfactory performance. If the commission, on the basis
46 of its experience, has reason to believe that an audit of a
47 particular taxpayer, either at a particular time or on
48 a particular schedule, would be of interest to a num-
49 ber of party states or their subdivisions, it may offer
50 to make the audit or audits, the offer to be contingent on
51 sufficient participation therein as determined by the com-
52 mission.

53 (e) *Confidentiality of audit information.*—Information ob-
54 tained by any audit pursuant to this section shall be con-
55 fidential and available only for tax purposes to party states,
56 their subdivisions or the United States. Availability of in-
57 formation shall be in accordance with the laws of the states
58 or subdivisions on whose account the commission performs the
59 audit, and only through the appropriate agencies or officers
60 of such states or subdivisions. Nothing in this section shall
61 be construed to require any taxpayer to keep records for any
62 period not otherwise required by law.

63 (f) *Cooperative audit.*—Other arrangements made or
64 authorized pursuant to law for cooperative audit by or on
65 behalf of the party states or any of their subdivisions are
66 not superseded or invalidated by this section.

67 (g) *Taxpayers not charged for audit.*—In no event shall
68 the commission make any charge against a taxpayer for an
69 audit.

70 (h) *Definition of “tax.”*—As used in this section, “tax,”
71 in addition to the meaning ascribed to it in section five,
72 means any tax or license fee imposed in whole or in part
73 for revenue purposes.

§11-10A-15. Arbitration.

1 (a) *General.*—Whenever the commission finds a need
2 for settling disputes concerning apportionments and alloca-
3 tions by arbitration, it may adopt a regulation placing this
4 section in effect, notwithstanding the provisions of this section.

5 (b) *Arbitration panel.*—The commission shall select and
6 maintain an arbitration panel composed of officers and em-
7 ployees of state and local governments and private persons
8 who shall be knowledgeable and experienced in matters of tax
9 law and administration.

10 (c) *Taxpayer request for arbitration.*—Whenever a tax-
11 payer who has elected to employ section six, or whenever
12 the laws of the party state or subdivision thereof are sub-
13 stantially identical with the relevant provisions of section
14 six, the taxpayer, by written notice to the commission and to
15 each party state or subdivision thereof that would be affected,
16 may secure arbitration of an apportionment or allocation,
17 if he is dissatisfied with the final administrative determination
18 of the tax agency of the state or subdivision with respect thereto
19 on the ground that it would subject him to double or multiple
20 taxation by two or more party states or subdivision thereof.
21 Each party state and subdivision thereof hereby consents to
22 the arbitration as provided herein, and agrees to be bound
23 thereby.

24 (d) *Composition of arbitration board.*—The arbitration
25 board shall be composed of one person selected by the tax-
26 payer, one by the agency or agencies involved, and one member
27 of the commission’s arbitration panel. If the agencies involved
28 are unable to agree on the person to be selected by them,
29 such person shall be selected by lot from the total member-

30 ship of the arbitration panel. The two persons selected for the
31 board in the manner provided by the foregoing provisions
32 of this subsection shall jointly select the third member of
33 the board. If they are unable to agree on the selection,
34 the third member shall be selected by lot from among the
35 total membership of the arbitration panel. No member of a
36 board selected by lot shall be qualified to serve if he is an
37 officer or employee or is otherwise affiliated with any party
38 to the arbitration proceeding. Residence within the jurisdiction
39 of a party to the arbitration proceeding shall not constitute
40 affiliation within the meaning of this subsection.

41 (e) *Meeting of board.*—The board may sit in any state
42 or subdivision party to the proceeding, in the state of the
43 taxpayer's incorporation, residence or domicile, in any state
44 where the taxpayer does business or in any place that it finds
45 most appropriate for gaining access to evidence relevant to
46 the matter before it.

47 (f) *Notice of hearing.*—The board shall give due notice
48 of the times and places of its hearings. The parties shall be
49 entitled to be heard, to present evidence and to examine and
50 cross-examine witnesses. The board shall act by majority
51 vote.

52 (g) *Powers of board.*—The board shall have power to
53 administer oaths, take testimony, subpoena and require the
54 attendance of witnesses and the production of accounts,
55 books, papers, records, and other documents, and issue com-
56 missions to take testimony. Subpoenas may be signed by
57 any member of the board. In case of failure to obey a
58 subpoena, and upon application by the board, any judge of a
59 court of competent jurisdiction of the state in which the
60 board is sitting or in which the person to whom the subpoena
61 is directed may be found may make an order requiring com-
62 pliance with the subpoena, and the court may punish failure
63 to obey the order as a contempt. The provisions of this
64 subsection apply only in states that have adopted this section.

65 (h) *Expense of arbitration.*—Unless the parties otherwise
66 agree the expenses and other costs of the arbitration shall
67 be assessed and allocated among the parties by the board in

68 such manner as it may determine. The commission shall fix
69 a schedule of compensation for members of arbitration boards
70 and of other allowable expenses and costs. No officer or
71 employee of a state or local government who serves as a
72 member of a board shall be entitled to compensation therefor
73 unless he is required on account of his service to forego the
74 regular compensation attaching to his public employment, but
75 any such board member shall be entitled to expenses.

76 (i) *Determinations of board; finality.*—The board shall
77 determine the disputed apportionment or allocation and any
78 matters necessary thereto. The determinations of the board
79 shall be final for purposes of making the apportionment or
80 allocation, but for no other purpose.

81 (j) *Filing of determinations.*—The board shall file with
82 the commission and with each tax agency represented in the
83 proceeding: The determination of the board; the board's writ-
84 ten statement of its reasons therefor; the record of the board's
85 proceedings; and any other documents required by the arbitra-
86 tion rules of the commission to be filed.

87 (k) *Publishing of determinations.*—The commission shall
88 publish the determinations of boards together with the state-
89 ments of the reasons therefor.

90 (l) *Rules of procedure.*—The commission shall adopt and
91 publish rules of procedure and practice and shall file a copy
92 of such rules and of any amendment thereto with the ap-
93 propriate agency or officer in each of the party states.

94 (m) *Written compromise.*—Nothing contained herein
95 shall prevent at any time a written compromise of any matter
96 or matters in dispute, if otherwise lawful, by the parties
97 to the arbitration proceedings.

§11-10A-16. Entry into force and withdrawal.

1 (a) *General.*—This compact shall enter into force when
2 enacted into law by any seven states. Thereafter, this com-
3 pact shall become effective as to any other state upon its
4 enactment thereof. The commission shall arrange for notifica-
5 tion of all party states whenever there is a new enactment of
6 the compact.

7 (b) *Withdrawal of membership.*—Any party state may
8 withdraw from this compact by enacting a statute repealing
9 the same. No withdrawal shall affect any liability already
10 incurred by or chargeable to a party state prior to the time
11 of such withdrawal.

12 (c) *Transition rule on withdrawal of membership.*—No
13 proceeding commenced before an arbitration board prior to
14 the withdrawal of a state and to which the withdrawing state
15 or any subdivision thereof is a party shall be discontinued
16 or terminated by the withdrawal, nor shall the board thereby
17 lose jurisdiction over any of the parties to the proceeding
18 necessary to make a binding determination therein.

§11-10A-17. Effect on other laws and jurisdiction.

1 Nothing in this compact shall be construed to:

2 (a) Affect the power of any state or subdivision thereof
3 to fix rates of taxation, except that a party state shall be
4 obligated to implement subsection (b), section six of this
5 article.

6 (b) Apply to any tax or fixed fee imposed for the
7 registration of a motor vehicle or any tax on motor fuel,
8 other than a sales tax: *Provided*, That the definition of
9 “tax” in subsection (g), section four of this article may
10 apply for the purposes of that section and the commission’s
11 powers of study and recommendation pursuant to section
12 eleven of this article may apply.

13 (c) Withdraw or limit the jurisdiction of any state or
14 local court or administrative officer or body with respect
15 to any person, corporation or other entity or subject matter,
16 except to the extent that such jurisdiction is expressly con-
17 ferred by or pursuant to this compact upon another agency
18 or body.

19 (d) Supersede or limit the jurisdiction of any court of
20 the United States.

§11-10A-18. Tax commissioner to represent state.

1 The tax commissioner shall represent this state on the
2 multistate tax commission.

§11-10A-19. Representation by an alternate.

1 The tax commissioner may be represented on the multi-
2 state tax commission by an alternate designated by him. Any
3 such alternate shall be a principal deputy or assistant of the
4 tax commissioner.

§11-10A-20. Representation of political subdivisions of this state.

1 The governor, after consultation with representatives of
2 municipalities having a business and occupation tax, shall
3 appoint three persons who are representative of subdivisions
4 affected or likely to be affected by the multistate tax com-
5 pact. The member of the commission representing this state,
6 and any alternate designated by him, shall consult regularly
7 with these appointees in accordance with subsection (b),
8 section nine of this article.

§11-10A-21. Multistate tax compact advisory committee created.

1 There is hereby established the multistate tax compact
2 advisory committee composed of the member of the multistate
3 tax commission representing this state, any alternate designated
4 by him, the attorney general or his designee, and two mem-
5 bers of the Senate, appointed by the president thereof and two
6 members of the House of Delegates, appointed by the speaker
7 thereof. The chairman shall be the member of the com-
8 mission representing this state. The committee shall meet on
9 the call of its chairman or at the request of a majority of
10 its members, but in any event it shall meet not less than
11 three times in each year. The committee may consider any
12 matters relating to recommendations of the multistate tax
13 commission and the activities of the members in representing
14 this state thereon.

§11-10A-22. Appropriation of dues and audit fees.

1 There shall annually be appropriated in the budget of
2 the tax commissioner, sufficient funds to pay audit fees and
3 the cost of being a member of the multistate tax compact.

§11-10A-23. Effective date; transition rules.

1 This article shall take effect on the first day of July, one
2 thousand nine hundred eighty-one, and shall apply to all tax

3 years ending after said first day of July. With respect to
4 tax years ending prior to the first day of July, one thousand
5 nine hundred eighty-one, the laws of this state as they existed
6 prior to the effective date of this article shall be preserved and
7 continued as fully and completely as if set forth in extenso
8 herein.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Byrle
Chairman Senate Committee

Tom E. Whitlow
Chairman House Committee

Originated in the House.

Takes effect July 1, 1981.

Joel C. Willis
Clerk of the Senate

V. Blaskenship
Clerk of the House of Delegates

Walter R. McCreary
President of the Senate

Walter G. Lee, Jr.
Speaker House of Delegates

The within is approved this the 24
day of April, 1981.

John H. Rayburn
Governor

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SECY. OF STATE