WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED

HOUSE BILL No. 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 there-to 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 by this state of the multistate compact will (1) simplify the problem which multistate and multinational businesses encounter in complying with the tax laws of this state, and (2) promote efficiency and uniformity of application in the administration of the tax laws. The Legislature does therefore declare that this article be construed so as to accomplish the foregoing purposes.

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

1 This article may be cited as the “multistate tax compact” no inference, implications or presumptions of legislative construction may be drawn on or made by reasons of the location or
grouping of any particular section or provision or portion of this article, and no legal effect may be given to any descriptive matter or headings relating to any part, section, subsection or paragraph of this article.

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

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

§11-10A-4. Purposes.

The purposes of this compact are to:

(a) Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

(b) Promote uniformity or compatibility in significant components of tax systems.

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

(d) Avoid duplicative taxation.


As used in this article, the terms:

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

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

(c) “Income tax” means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income,
one or more forms of which expenses are not specifically and
directly related to particular transactions.

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

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

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

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

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

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

(a) **Taxpayer option, state and local income taxes.**—
Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with section seven of this article. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein section seven is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

(b) **Taxpayer option, short form.**—Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the figure spe-
cifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

(c) Coverage.—Nothing in this section relates to the reporting or payment of any tax other than an income tax.

§11-10A-7. Division of income.

(a) Definitions.—As used in this section, unless the context otherwise requires:

1. “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 constitute integral parts of the taxpayer's regular trade or business operations.

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

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

4. “Financial organization” means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company or any type of insurance company.

5. “Nonbusiness income” means all income other than business income.

6. “Public utility” means any business entity (a) which owns or operates any plant, equipment, property, franchise or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery or furnishing of electricity, water or steam; and (b) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.
(7) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this section.

(8) "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.

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

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

(c) "Taxable in another state" defined.—For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if (1) in that state he 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 corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(d) Allocation of nonbusiness income.—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, shall be allocated as provided in paragraphs (1) through (4) of this subsection.

(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.

(3) Interest.—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 copyright is utilized by the payer in a state
in which the taxpayer is not taxable and the taxpayer's com-
cmercial 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 account-
ing 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 allo-
cation 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.

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

(f) 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 in
this state during the tax period and the denominator of which
is the average value of all the taxpayer's real and tangible per-
sonal property owned or rented and used during the tax period.

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

(h) Average value of property.—The average value of
property shall be determined by averaging the values at the
beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(i) Payroll factor.—The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(j) Compensation.—Compensation is paid in this state if:

1. The individual's service is performed entirely within the state;
2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
3. Some of the service is performed in the state and (A) the 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 (B) 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 individual's residence is in this state.

(k) Sales factor.—The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

1. Allocation of sales of tangible personal property.—

Sales of tangible personal property are in this state if:

1. The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or
2. The property is shipped from an office, store, warehouse, factory or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.
175 (m) Allocation of other sales.—Sales, other than sales of tangible personal property, are in this state if:
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177 (1) The income-producing activity is performed in this state; or
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179 (2) 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.
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181 (n) Other methods of allocation and apportionment.—If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity 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 activity, if reasonable:
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183 (1) Separate accounting;
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185 (2) The exclusion of any one or more of the factors;
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187 (3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
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189 (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
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§11-10A-8. Elements of sales and use taxes.

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

9 (b) Sales tax exemption certificates; vendors may rely. —Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate
state or subdivision taxing authority, the vendor shall be relieved of liability for a sale or use tax with respect to the transaction.

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

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

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

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

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

(e) Meetings and notice of meetings.—The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular
meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) Election of officers; appointment of executive director; bonding.—The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem proper.

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

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

(i) Donations and grants.—The commission may accept for any of its purposes and functions any donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

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

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

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

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

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

(b) Advisory and technical committees.—The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) Additional committees.—The commission may establish such additional committees as its bylaws may provide.


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

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

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law administration.
(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

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

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

(b) State's share.—Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) Credit of state not to be pledged.—The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (i), section eight of the article: Provided, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (i), section fourteen, the commission shall not
incur any obligation prior to the allotment of funds by the
party states adequate to meet the same.

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

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

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

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

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

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

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

(2) Afford all affected party states and subdivisions and
(c) Adoption by member states.—The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.


(a) General.—This article shall be in force only in those party states that specifically provide therefor by statute. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

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

(c) Subpoena.—The commission may apply to any court of record in West Virginia having power to issue compulsory
process for orders in aid of its powers and responsibilities pursuant to this section and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this section.

(d) Refusal to perform audit.—The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable for satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(e) Confidentiality of audit information.—Information obtained by any audit pursuant to this section shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this section shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(f) Cooperative audit.—Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this section.
(g) **Taxpayers not charged for audit.**—In no event shall
the commission make any charge against a taxpayer for an
audit.

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

§11-10A-15. **Arbitration.**

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

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

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

(d) **Composition of arbitration board.**—The arbitration
board shall be composed of one person selected by the tax-
payer, one by the agency or agencies involved, and one member
of the commission’s arbitration panel. If the agencies involved
are unable to agree on the person to be selected by them,
such person shall be selected by lot from the total member-
ship of the arbitration panel. The two persons selected for the
board in the manner provided by the foregoing provisions
of this subsection shall jointly select the third member of
the board. If they are unable to agree on the selection,
the third member shall be selected by lot from among the
total membership of the arbitration panel. No member of a
board selected by lot shall be qualified to serve if he is an
officer or employee or is otherwise affiliated with any party
to the arbitration proceeding. Residence within the jurisdiction
of a party to the arbitration proceeding shall not constitute
affiliation within the meaning of this subsection.

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

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

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

(h) Expense of arbitration.—Unless the parties otherwise
agree the expenses and other costs of the arbitration shall
be assessed and allocated among the parties by the board in
such manner as it may determine. The commission shall fix
a schedule of compensation for members of arbitration boards
and of other allowable expenses and costs. No officer or
employee of a state or local government who serves as a
member of a board shall be entitled to compensation therefor
unless he is required on account of his service to forego the
regular compensation attaching to his public employment, but
any such board member shall be entitled to expenses.

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

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

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

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

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

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

(a) General.—This compact shall enter into force when
enacted into law by any seven states. Thereafter, this com-
 pact shall become effective as to any other state upon its
enactment thereof. The commission shall arrange for notifica-
tion of all party states whenever there is a new enactment of
the compact.
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(b) Withdrawal of membership.—Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

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

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

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

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: Provided, That the definition of "tax" in subsection (g), section four of this article may apply for the purposes of that section and the commission's powers of study and recommendation pursuant to section eleven of this article may apply.

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

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

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

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

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

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

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

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

1 There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission representing this state, any alternate designated by him, the attorney general or his designee, and two members of the Senate, appointed by the president thereof and two members of the House of Delegates, appointed by the speaker thereof. The chairman shall be the member of the commission representing this state. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three times in each year. The committee may consider any matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon.

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

1 There shall annually be appropriated in the budget of the tax commissioner, sufficient funds to pay audit fees and 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 thousand nine hundred eighty-one, and shall apply to all tax
3 years ending after said first day of July. With respect to tax years ending prior to the first day of July, one thousand nine hundred eighty-one, the laws of this state as they existed prior to the effective date of this article shall be preserved and continued as fully and completely as if set forth in extenso herein.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.

Takes effect July 1, 1981.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

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

[Signature]
Governor