

No. 1693
(Tax)

WEST VIRGINIA LEGISLATURE

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Com Sub. for
HOUSE BILL No. 1693

(By Mr. Speaker Mr. Allright, &
Del. Farley)

Passed April 8, 1985

In Effect 90 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1693

(By MR. SPEAKER, MR. ALBRIGHT and DELEGATE FARLEY)

[Passed April 8, 1985; in effect 90 days from passage.]

AN ACT to repeal article twelve-a, of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section seventeen-a, article twenty-four of said chapter eleven; to amend and reenact section five, article thirteen, chapter eight of said code; to amend and reenact section two, article nine, chapter eleven of said code; to amend and reenact section three, article ten of said chapter eleven; to further amend said article ten by adding thereto a new section, designated section eighteen-a; to amend article twelve-a of said chapter eleven, by adding thereto a new section, designated section twenty-four; to amend and reenact sections two, two-d, two-m and nine, article thirteen of said chapter eleven; to further amend said article thirteen by adding thereto two new sections, designated section twenty-eight and section twenty-nine; to amend and reenact section eight, article twenty-one of said chapter eleven; to amend and reenact sections three, four, five, six, seven, nine, thirteen and nineteen, article twenty-four of said chapter eleven; to further amend said article twenty-four by adding thereto a new section, designated section nine-a; to further amend said article twenty-four by redesignating section thirteen-a as section thirteen-b, and reenacting the same; and by adding a new section thereto, designated section thirteen-a; to further amend said chapter eleven by adding thereto three new articles, designated articles thirteen-a,

thirteen-b and twenty-three, all relating generally to state tax reform of state taxes imposed on businesses; preserving the power of municipalities to continue imposing business and occupation or privilege taxes on business activity engaged in within the municipality and as to such: Prohibiting multiple taxation of the same gross income under the same classification by two or more municipalities; authorizing the tax commissioner to prescribe regulations for apportionment of gross receipts, and requiring administrative procedures for assessment and collection of tax; making "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" applicable to the taxes imposed by articles thirteen-a, thirteen-b and twenty-three, chapter eleven of this code; imposing additions to tax for underpayment of estimated tax and prescribing when additions are not applicable; imposing annual business and occupation privilege tax against persons engaging in businesses and other activities in this state until the first day of July, one thousand nine hundred eighty-seven and thereafter, only on the privilege of providing public utility service and generating electric power, with certain rate changes and effective dates therefor; requiring tax commissioner to prepare certain comparative study reports in relation to the new tax structure, dates for submission thereof to governor and legislature; requiring tax year and method of accounting for purposes of business and occupation taxes conforming with methods for federal income tax purposes; providing transition rules and effective dates for changes in business and occupation tax and surtax; imposing severance tax act and as to such act, providing for: Short title, definitions, determination of tax base, imposition of tax, rates of tax, procedures for computation, assessment and collection of tax, incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" into severance tax act, effective dates and transition rules; and requiring filing of information return, with civil penalty for failure to file; providing for tax credit for such tax against personal income tax and effective date thereof; imposing the telecommunications tax act, and as to such act, providing for: Short title, definitions, imposition of tax, rate of tax, procedures for computation, assessment and collection of tax, incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and

Administration Act” into telecommunications tax act, effective dates and transition rules; requiring filing of information return, with civil penalty for failure to file; imposing a business franchise tax act, and as to such act, providing for: Legislative finding, short title, definitions; determination of tax base; use of four-factor apportionment formula, double-weighting the sales factor; imposition of tax; rate of tax; procedures for computation, assessment and collection of tax; incorporation of provisions of “West Virginia Tax Crimes and Penalties Act” and “West Virginia Tax Procedure and Administration Act” into business franchise tax, effective dates and transition rules; providing for credits against franchise tax; requiring filing of information return with civil penalty for failure to file; defining terms in “West Virginia Corporation Net Income Tax Act” and as to such act providing for: Nine and three-quarters percent tax rate, phasing-down in equal steps over five-year period to nine percent tax rate; taxation of banks and other financial organizations; adjustments to federal taxable income to determine West Virginia income allocation and apportionment of income of multi-state taxpayers; use of four-factor formula for apportionment, double-weighting the sales factor; and procedures for computation, assessment and collection of tax, with effective dates.

Be it enacted by the Legislature of West Virginia:

That article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section seventeen-a, article twenty-four of said chapter eleven be repealed; that section five, article thirteen, chapter eight of said code be amended and reenacted; that section two, article nine, chapter eleven of said code be amended and reenacted; that section three, article ten of said chapter eleven be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section eighteen-a; that said article twelve-a of said chapter eleven, be amended by adding thereto a new section, designated section twenty-four; that sections two, two-d, two-m and nine, article thirteen of said chapter eleven be amended and reenacted; that said article thirteen be further amended by adding thereto two new sections, designated section twenty-eight and section twenty-nine; that section eight, article twenty-one of said chapter eleven be amended and reenacted; that sections three, four, five, six, seven, nine, thirteen and nineteen, article twenty-four of said chapter

eleven be amended and reenacted; that said article twenty-four be further amended by adding thereto a new section, designated section nine-a; that said article twenty-four be further amended by redesignating section thirteen-a as thirteen-b and reenacting the same, and by adding thereto a new section, designated section thirteen-a; and that said chapter eleven be further amended by adding thereto three new articles, designated articles thirteen-a, thirteen-b and twenty-three, all to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) *Authorization to impose tax.*—Whenever any business activity or occupation for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July one, one thousand nine hundred eighty-seven, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(b) *Maximum tax rates.*—In no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen.

(c) *Effective date of local tax.*—Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect.

(d) *Exemptions.*—A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July one, one thousand nine hundred eighty-seven, and determined without regard to any annual or monthly monetary exemption also specified therein.

(e) *Activity in two or more municipalities.*—Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the tax commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection (e) shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.*—The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June thirtieth, one thousand nine hundred seventy-eight, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

(a) The provisions of this article shall apply to the following taxes imposed by chapter eleven:

- (1) The inheritance and transfer taxes imposed by article eleven;
- (2) The business franchise registration tax imposed by article twelve;
- (3) The annual tax on incomes of certain carriers imposed by article twelve-a;
- (4) The business and occupation tax imposed by article thirteen;
- (5) The gasoline and special fuels excise tax imposed by article fourteen;
- (6) The motor carrier road tax imposed by article fourteen-a;
- (7) The consumers sales and service tax imposed by article fifteen;
- (8) The use tax imposed by article fifteen-a;
- (9) The cigarette tax imposed by article seventeen;
- (10) The soft drinks tax imposed by article nineteen;
- (11) The personal income tax imposed by article twenty-one; and
- (12) The corporation net income tax imposed by article twenty-four.

(b) The provisions of this article shall also apply to the West Virginia tax procedure and administration act in article ten of chapter eleven, and to any other articles of this chapter when such application is expressly provided for by the Legislature.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

- (a) The provisions of this article shall apply to the inheritance and

transfer taxes, and interstate compromise and arbitration of inheritance and death taxes, the business franchise registration certificate tax, the annual tax on incomes of certain carriers, the business and occupation tax, the consumers sales and service tax, the use tax, the cigarette tax, the soft drinks tax, the personal income tax, the corporation net income tax, the gasoline and special fuel excise tax, the motor carrier road tax and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property, the corporate license tax or any other tax not listed hereinabove.

(b) The provision of this article shall also apply to any other article of this chapter when such application is expressly provided for by the Legislature.

§11-10-18a. Additions to tax for failure to pay estimated tax.

(a) *Addition to tax.*—Except as provided in subsections (d) and (e), in the case of any underpayment of estimated tax there shall be added to the tax due for the taxable year, under any article administered by this article, an amount determined at the rate established under section seventeen of this article, on the amount of the underpayment of estimated tax for the period of the underpayment.

(b) *Amount of underpayment.*—For purposes of subsection (a), the amount of the underpayment shall be the excess of:

(1) The amount of the installment which would be required to be paid if the estimated tax were an amount equal to eighty percent of the tax shown on the return for the taxable year, or if no return was filed, eighty percent of the tax for such year, over

(2) The amount, if any, of the installments paid on or before the last date prescribed for payment.

(c) *Period of underpayment.*—The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered

a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision (1), subsection (b) for such installment date.

(d) *Exception.*—Notwithstanding the provisions of the preceding subsections, the additions to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

(1) *Prior year's tax.*—The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months.

(2) *Prior year's facts.*—An amount equal to the tax computed at the rates applicable to the current taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year.

(3) *Annualized tax.*—

(A) An amount equal to eighty percent of the tax for the current taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

(ii) For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month;

(iii) For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month; and

(iv) For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year.

(B) For purposes of this subdivision (3), the taxable income shall be placed on an annualized basis by:

(i) Multiplying by twelve the taxable income referred to in

subparagraph (A), and

(ii) Dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine or eleven, as the case may be) referred to in subparagraph (A).

(e) *Short taxable year.*—The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the tax commissioner.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-24. Repeal of article and date thereof; short taxable years for taxpayers on calendar or fiscal year and cash or accrual accounting methods.

(a) Each and every provision of article twelve-A of this chapter is repealed for all tax periods beginning on and after the first day of July, one thousand nine hundred eighty-seven: *Provided*, That tax liabilities, if any, arising for taxable years or portions thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if the taxes imposed by article twelve-a of this chapter had not been repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

(b) Persons who are calendar year taxpayers under this article shall file their annual return for calendar year one thousand nine hundred eighty-seven, on or before the fifteenth day of September, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the tax commissioner.

(c) Persons who are fiscal year taxpayers shall similarly file an annual return on or before the fifteenth day of September, one thousand nine hundred eighty-seven, for their short taxable year which ended the thirtieth day of June, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the tax commissioner.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any

additional taxes due within thirty days after determining that gross income was under-reported on such annual return, or that any allowable deductions were over-reported.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method: *Provided*, That such a taxpayer shall file a supplemental return for such year within one month after the close of each calendar quarter during which he received gross income for any activity or portion thereof completed prior to the first day of July, one thousand nine hundred eighty-seven, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the carrier income tax is repealed.

ARTICLE 13. BUSINESS AND OCCUPATION TAX .

§11-13-2. Imposition of privilege tax; reduction of rates and elimination of surtax on July 1, 1985, and exceptions thereto; elimination of certain classifications effective July 1, 1987, with retention thereafter of only classifications for public service utility businesses and electric power generation businesses.

(a) *Periods before July 1, 1987.*—For taxable years or months thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article and the application of the surtax rate against gross income as set forth in section two-k until expiration of such surtax on the first day of July, one thousand nine hundred eighty-five. On and after the first day of July, one thousand nine hundred eighty-five, the rates set forth in sections two-b through two-m, inclusive, shall be reduced by five percent through reduction of the rates applicable and in effect on the thirtieth day of June, one thousand nine hundred eighty-five, except that taxpayers exercising privileges in respect of severance, extraction and production of natural resource products and taxable at the rates set forth under section two-a of this article, shall not receive such rate

reduction: Provided, That there shall be no such reduction of the tax imposed in section two-l for the use and benefit of counties and municipalities; Provided, further, That the additional, temporary surtax set forth in section two-k of this article shall, on and after the first day of July, one thousand nine hundred eighty-five, be nullified and of no further force or effect whatsoever.

(b) Periods after June 30, 1987. -- For taxable years or months thereof beginning after the thirtieth day of June, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-d and two-m of this article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the rates applicable to the privileges exercised in sections two-d and two-m of this article shall be restored and returned to those which were in effect as to such privileges on the first day of January, one thousand nine hundred eighty-five.

(c) If any person liable for any tax under sections two-a, two-b, two-l or two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said sections, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

(d) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(e) Gross income included in the measure of the tax under sections two-a, two-b, two-l, and two-m of this article shall neither be added

nor deducted in computing the tax levied under the other sections of this article.

(f) A person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products or electricity at retail in this state shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section two-c of this article for the privilege of engaging in the business of selling such natural resources, manufactured products or electricity at retail in this state. But any person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products or electricity to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed in section two-c of this article.

(g) Persons exercising any privilege taxable under section two-b or two-m of this article shall not be required to pay the tax imposed in section two-c of this article for the privilege of selling their manufactured products or electricity for delivery outside of this state, but the gross income derived from the sale of such products or electricity outside of this state shall be included in determining the measure of the tax imposed on such person in section two-b or two-m.

(h) A person exercising privileges taxable under the other sections of this article, producing coal, oil, natural gas, minerals, timber or other natural resource products, the production of which is taxable under sections two-a and two-l, and using or consuming the same in his business or transferring or delivering the same as any royalty payment, in kind, or the like, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe.

§11-13-2d. Public service or utility business.

Upon any person engaging or continuing within this State in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to gross income of the business multiplied by the respective rates as follows: Street and interurban and electric railways, one and four-tenths percent; water companies, four and four-tenths percent, except as to income received by municipally owned water plants; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same: *Provided*, That electric light and power companies which engage in the supplying of public service but which do not generate or produce electric power shall be taxed on the gross income derived therefrom at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: *Provided, however* that the sale of electric power under this section shall be taxed at the rate of two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: *Provided*, That such two and forty-six hundredths percent rate will be reduced to a rate of two and three hundred thirty-seven thousandths percent through occurrence of the contemplated five percent reduction of rates on the first day of July, one thousand nine hundred eighty-five, and with such rate to thereafter, on the first day of July, one thousand nine hundred eighty-seven, become two percent; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public

services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

§11-13-2m. Business of generating or producing electric power; exception; rates.

(1) Upon every person engaging or continuing within this State in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d [§11-13-2d] of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: *Provided*, That such two and forty-six hundredths percent rate will be reduced to a rate of two and three hundred thirty-seven thousandths percent through occurrence of the contemplated five percent reduction of rates on the first day of July, one thousand nine hundred eighty-five and with such rate to thereafter, on the first day of July, one thousand nine hundred eighty-seven, become two percent; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

(2) The measure of this tax shall be the value of all electric power generated or produced in this State for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this State: *Provided*, That the gross income received by municipality owned plants generating or producing

electricity shall not be subject to tax under this article.

§11-13-9. Tax year.

(a) *Taxable year.*—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Method of accounting.*—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the tax under this article shall be computed under such method that in the opinion of the tax commissioner clearly reflects such income.

(c) *Adjustments.*—In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the tax commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

§11-13-28. Effective date; transition rules.

(a) The provisions of sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article are inoperative as of the first day of July, one thousand nine hundred eighty-seven. Persons who are fiscal year taxpayers having a fiscal year ending on the thirtieth day of June, one thousand nine hundred eighty-seven, shall file their annual return for fiscal year one thousand nine hundred eighty-seven on or before the thirty-first day of July, one thousand nine hundred eighty-seven and remit the amount of any taxes shown thereon to be due.

(b) Persons who are calendar year taxpayers and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, and persons who are fiscal year taxpayers having a fiscal year ending on any date other than the thirtieth day of June, one thousand nine hundred eighty-seven, and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, shall file their annual returns on or before the thirty-first day of July, one thousand nine hundred eighty-seven for the short taxable year which ended

the thirtieth day of June, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due. Persons required to file an annual return for a short taxable year may claim a portion of the annual exemption allowed under section three of this article, determined in accordance with the amount of the exemption allowable for each month in the short taxable year. The five thousand dollar annual exemption allowed to producers of natural gas shall similarly be calculated and allowed on a monthly basis at the rate of four hundred sixteen dollars and sixty-six cents for each month of the short taxable year ending on the thirtieth day of June, one thousand nine hundred eighty-seven.

(c) Persons engaged in activities taxable under sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article prior to the first day of July, one thousand nine hundred eighty-seven, are taxable under either article thirteen-a or twenty-three of this chapter, or both, on and after such date.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending the thirtieth day of June one thousand nine hundred eighty-seven, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any additional taxes due within thirty days after determining that gross income, gross proceeds of sale or gross value were under reported on such annual return, or that any allowable deductions were over reported.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method: *Provided*, That such a taxpayer shall file a supplemental return for such year within one month after the close of each quarter during which he received gross income or gross proceeds of sale for any activity or portion thereof completed prior to the first day of July, one thousand nine hundred eighty-seven, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the business and occupation tax no longer applies to the taxpayer's ongoing business activity.

(f) Tax liabilities, if any arising for taxable years ending prior to

the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article had not been effectively repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

§11-13-29. Tax Commissioner to furnish comparative study reports to Governor and Legislature, dates therefor.

The state tax commissioner, who will be recipient of informational reports and tax returns from taxpayers in respect of the revised state tax structure on business, beginning on the first day of July, one thousand nine hundred eighty-seven, shall furnish a comparative study report in respect of the data concerning businesses and their changed tax liabilities, entitlement to tax credits, and general categories wherein tax liability is substantially increased or lessened. Such report shall be furnished to the governor and to the Legislature at its regular sessions of the year one thousand nine hundred eighty-six and one thousand nine hundred eighty-seven, with particular emphasis on the elements of equity and adequacy that the acquired data may reflect in respect of the state's major industries and taxpayers, on the basis of their being subjected to taxation under the revised state tax structure.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-1. Short title; arrangement and classification.

This article may be cited as the "Severance Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.

§11-13A-2. Definitions.

(a) *General.*—When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) *Terms defined.*—

(1) "Coal" means and includes any material composed predom-

inantly of hydrocarbons in a solid state.

(2) "Delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(3) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: *Provided*, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(4) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining.

(5) "Fiduciary" means and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(6) "Gross value" in the case of natural resources means the market value of the natural resource product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the amount received or receivable by the taxpayer.

(B) For natural resources severed or processed (or both severed and processed) but not sold during a reporting period, gross value shall be determined as follows:

(i) If the natural resource is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value.

(ii) If there is no existing contract, the fair market value for that grade and quality of the natural resource shall be used in computing gross value.

(C) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(D) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(E) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of the coal of similar grade and quality and in the same condition immediately preceding the processing of the coal in this state.

(F) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processing natural resources of similar grade and quality reduced by the fair market value of the coal of similar grade and quality and in the same condition immediately preceding the processing of the coal.

(G) In all instances, the gross value shall not be reduced by any state or federal taxes, royalties, sales commissions, or any other expense.

(H) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(7) "Mining" includes not merely the extraction of ores or minerals from the ground but also those treatment processes considered as mining under this article, and those treatment processes necessary or incidental thereto.

(8) "Natural resource" means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or

on the soils or waters of this state, and includes standing timber.

(9) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which natural resources are severed, extracted, reduced to possession and produced or prepared in this state for sale, profit or commercial use. "Partner" includes a member of such a syndicate, group, pool, joint venture or organization.

(10) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(11) "Processed" or "processing" as applied to oil and natural gas shall not include any conversion or refining activities.

(12) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(13) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(14) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: *Provided*, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth, *Provided, further*, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(15) "Stock" includes shares in an association, joint-stock company or corporation.

(16) "Tax commissioner" means the tax commissioner of the state of West Virginia, or his delegate.

(17) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(18) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest therein is the taxpayer.

(19) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(20) "This state" means the state of West Virginia.

§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

(a) Upon every person exercising the privilege of engaging or continuing within this state in severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource product or products there is hereby imposed a tax in the amount to be determined by the application of rates against the gross value of the articles produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the rates, in the classifications and according to the effective dates in subsection (b) of this section.

(b) *Tax rates; classifications; effective dates.*—Beginning on and after the first day of July, one thousand nine hundred eighty-seven and for each first day of July thereafter, as specified below, the rates

of tax on each respective classification and for each respective year are as follows:

(1) On coal, and including the thirty-five one hundredths (.35) of one percent additional severance tax on such coal for the benefit of counties and municipalities, as provided in section six of this article, on

July 1, 1987—three and eighty-five one hundredths (3.85) percent;

July 1, 1988—three and eighty-eighths one hundredths (3.88) percent;

July 1, 1989—three and ninety-one hundredths (3.91) percent;

July 1, 1990—three and ninety-four one hundredths (3.94) percent;

July 1, 1991—three and ninety-seven one hundredths (3.97) percent; and

July 1, 1992 and thereafter—four (4.0) percent.

(2) On limestone or sandstone quarried or mined, on

July 1, 1987—two and two-tenths (2.2) percent;

July 1, 1988—two and fifty-six one hundredths (2.56) percent;

July 1, 1989—two and ninety-two one hundredths (2.92) percent;

July 1, 1990—three and twenty-eight one hundredths (3.28) percent; ,

July 1, 1991—three and sixty-four one hundredths (3.64) percent; and

July 1, 1992—and thereafter—four (4.0) percent.

(3) On oil, on

July 1, 1987—four and thirty-four one hundredths (4.34) percent;

July 1, 1988—four and two hundred seventy-two one thousandths (4.272) percent;

July 1, 1989—four and two hundred four one thousandths (4.204) percent;

July 1, 1990—four and one hundred thirty-six one thousandths (4.136) percent;

July 1, 1991—four and sixty-eight one thousandths (4.068) percent;

and

July 1, 1992—and thereafter—four (4.0) percent.

(4) (a) On natural gas, on

July 1, 1987—six and five-tenths (6.5) percent;

July 1, 1988—six (6.0) percent;

July 1, 1989—five and five-tenths (5.5) percent;

July 1, 1990—five (5.0) percent;

July 1, 1991—four and five-tenths (4.5) percent; and

July 1, 1992—and thereafter—four (4.0) percent.

(4) (b) On natural gas produced from new wells drilled and placed in service on and after July 1, 1987 — four (4.0) percent.

(5) On sand, gravel or other mineral product not quarried or mined, on

July 1, 1987—four and thirty-four one hundredths (4.34) percent;

July 1, 1988—four and two hundred seventy-two one thousandths (4.272) percent;

July 1, 1989—four and two hundred four one thousandths (4.204) percent;

July 1, 1990—four and one hundred thirty-six one thousandths (4.136) percent;

July 1, 1991—four and sixty-eight one thousandths (4.068) percent; and

July 1, 1992—and thereafter (4.0) percent.

(6) On timber, on and after July 1, 1987—two and five-tenths (2.5) percent.

(7) On other natural resources, on

July 1, 1987—two and eighty-six one hundredths (2.86) percent;

July 1, 1988—three and eighty-eight one thousandths (3.088) percent;

July 1, 1989—three and three hundred sixteen one thousandths (3.316) percent;

July 1, 1990—three and five hundred forty-four one thousandths (3.544) percent;

July 1, 1991—three and seven hundred seventy-two one thousandths (3.772) percent

and

January 1, 1992—and thereafter four (4.0) percent.

(c) *Tax in addition to other taxes.*—The taxes imposed by this article shall apply to all persons severing or processing (or both severing and processing) natural resources in this state and shall be in addition to all other taxes imposed by law.

(d) *Statement of purpose; relationship to existing contracts.* It is the intent of the Legislature in enacting this article thirteen-a to continue the imposition of the tax upon exercising the privilege of engaging or continuing within this state the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use, natural resource products, which was imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven, by such act. The provisions of any contract entered into prior to the effective date of this act and relating to the allocation, reimbursement, payment or assessment of the tax imposed by section two-a, article thirteen of this chapter, formerly, shall apply with full force and effect to the tax imposed by this article; it being the intent of the Legislature that, for purposes of any such contractual provision, the tax imposed by this article shall be considered the same as the tax imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven.

§11-13A-4. Treatment processes as production.

(a) *Treatment processes considered as mining.*—The following treatment processes (and the treatment processes necessary or incidental thereto) when applied by the mine owner or operator to natural resources mined in this state shall be considered as mining and part of the privilege taxed under this article.

(1) *Coal.*—In the case of coal: Cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment.

(2) *Minerals customarily sold in crude form.*—In the case of other minerals which are customarily sold in crude form: Sorting, concentrating, sintering and substantially equivalent processes to

bring them to shipping grade and form, and loading for shipment.

(3) *Minerals not customarily sold in crude form.*—In the case of other minerals which are not customarily sold in the form of the crude mineral products: Crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation or electrostatic or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting or refining), or substantially equivalent processes or combinations of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit.

(4) *Oil shale.*—In the case of oil shale: Extraction from the ground, crushing, loading into the retort and retorting, but not hydrogenation, refining, or any other process subsequent to retorting; and

(5) *Other*—Any other treatment process provided for in a legislative rule prescribed by the tax commissioner which, with respect to the particular ore or mineral, is not inconsistent with the preceding subdivisions of this subsection (a).

(b) *Treatment processes not considered as mining.*—Unless such processes are otherwise provided for in subsection (a), or are necessary or incidental to processes provided for in subsection (a), the following treatment processes shall not be considered as “mining”: Electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action and molding or shaping.

(c) *Treatment processes considered part of production of oil, natural gas and natural gas liquids.*—The privileges of severing and producing oil and natural gas shall not include any conversion or refining process.

(d) *Timber production privilege.*—The privilege of severing and producing timber shall end once the tree is severed and delimbed.

§11-13A-5. Oil and gas operating unit.

(a) For purposes of the production of oil classification and the production of natural gas classification, as set forth in this article, multiple co-owners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the

oil and gas, as personal property, immediately after its severance, extraction, reduction to possession and production (except royalty recipients in kind) shall be deemed to be a "group or combination acting as a unit" and one "person" as defined in section two of this article, if not otherwise defined therein, whenever engaged in the producing of oil or natural gas through common use (by joint or separately executed contracts) of the same independent contract driller or operator's services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members' accounts or for members of such group or combination to take in kind any proportionate part of such natural resources.

(b) Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

(a) Additional coal severance tax. -- Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or preparing coal (or both severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an additional severance tax, the amount of which shall be equal to the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of the article is measured as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection (a) shall be in addition to the tax imposed by section three of this article, and this additional tax is hereinafter in this section referred to as the "additional tax on coal."

(b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article ten of the West Virginia Constitution. Seventy-five percent of the net proceeds of this additional tax on coal shall, after appropriation thereof by the Legislature, be distributed by the state treasurer in the manner hereinafter specified, to the various counties of this state in which the coal upon which this additional tax is imposed was located at the time it was severed from the ground. Those counties are hereinafter in this section referred to as the "coal-producing counties." The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed, after appropriation, among all the counties and municipalities of this state in the manner hereinafter specified.

(c) Such additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by said section three of this article, and all of the enforcement and other provisions of this article shall apply to such additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-two, article two, chapter twenty-two of this code, the tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules and regulations requiring the furnishing by producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules and regulations as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of such additional tax on coal to such coal-producing counties, there is hereby created in the state treasurer's office a special fund to be known as the "county coal revenue fund;" and in order to provide a procedure for the distribution of the remaining twenty-five percent of the net proceeds of such additional tax on coal to all counties and municipalities of the state, without regard to coal having been produced therein, there is also hereby created in the state treasurer's office a special fund to be known as the "all counties and municipalities revenue fund."

Seventy-five percent of the net proceeds of such additional tax on coal shall be deposited in the "county coal revenue fund" and twenty-five percent of such net proceeds shall be deposited in the "all

counties and municipalities revenue fund," from time to time, as such proceeds are received by the tax commissioner. The moneys in such funds shall, after appropriation thereof by the Legislature, be distributed to the respective counties and municipalities entitled thereto in the manner set forth in subsection (e) of this section.

(e) The moneys in the "county coal revenue fund" and the moneys in the "all counties and municipalities revenue fund" shall be allocated among and distributed quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled thereto on that distribution date. The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

(f) The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined by (1) dividing the total amount of moneys in such fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter, and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter.

(g) The amount to which each county and municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" shall mean the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the "all counties and municipalities revenue fund" by

multiplying the total amount in such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county shall be the county's "base share."

(2) Each county's "base share" shall then be subdivided into two portions. One portion shall be determined by multiplying the "base share" by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion shall be determined by multiplying the "base share" by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's "base share." The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) All counties and municipalities shall create a "coal severance tax revenue fund" which shall be the depository for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such "coal severance tax revenue funds," in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: *Provided*, That in counties with population in excess of two hundred thousand at least fifty percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal producing area or areas of the county, said coal producing areas of each county to be determined generally by the state tax commissioner: *Provided, however*, That a line item budgeted amount from the current levy estimated for a county shall be funded at one hundred percent of the preceding year's expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: *Provided further*, That said coal severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

(i) On or before March twenty-eighth, one thousand nine hundred eighty-six and each March twenty-eighth thereafter, each county commission or governing body of a municipality receiving such revenue shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending such revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in said special fund at the close of a fiscal year shall be reappropriated to the budget for the subsequent fiscal year. Such reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before July fifteenth of the current budget year.

(j) On or before December fifteenth, one thousand nine hundred eighty-six, and each December fifteenth thereafter, the tax commissioner shall deliver to the Clerk of the Senate and the Clerk of the House of Delegates a consolidated report of the special budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July fifteenth of the current year.

(k) The state tax commissioner shall retain for the benefit of the state from the additional taxes on coal collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the tax commissioner.

§11-13A-7. Accounting periods and methods of accounting.

(a) *General rule.* — For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Change of taxable year.* — If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) *Methods of accounting.*

(1) *Same as federal.* — A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of

accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) *Change of accounting methods.* — If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

§11-13A-8. Annual return.

On or before the expiration of one month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and computing the amount of taxes due under this article for the taxable year.

§11-13A-9. Periodic installment payments of tax.

(a) *General rule.* — Taxes levied under this article shall be due and payable in periodic installments as follows:

(1) *Tax of more than \$1,000 per month.* — For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner of the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for such year.

(2) *Tax of \$1,000 per month or less.* — For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of the tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of any annual exemption allowed for such year.

(b) *Exception.* — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

§11-13A-10. Time for filing returns and paying tax; credit.

(a) *Calendar year taxpayers.* — Returns made on the basis of the calendar year shall be filed with the tax commissioner on or before the expiration of one month after the end of the taxable year.

(b) *Fiscal year taxpayers.* — Returns made on the basis of a fiscal year shall be filed with the tax commissioner on or before the expiration of one month after the end of the fiscal year.

(c) *Payment of tax.* — A person required to make and file a return under this article shall pay any tax shown to be due by such return, without assessment, notice or demand, to the tax commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return).

(d) *Credit.* — Every taxpayer under this article shall be allowed an annual credit of five hundred dollars against the taxes due under this article to be applied at the rate of forty-one dollars and sixty-seven cents per month for each month the taxpayer was engaged in business in this state exercising a privilege taxable under this article.

§11-13A-11. Extension of time for filing returns.

The tax commissioner may, upon written request received on or prior to the due date of the annual return or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory

to the tax commissioner is provided by the taxpayer.

§11-13A-12. Extension of time for paying tax.

(a) *Amount determined on return.* — The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) *Amount determined as deficiency.* — Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) *No extension for certain deficiencies.* — No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-13A-13. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: *Provided*, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

§11-13A-14. Time and place for paying tax shown on returns.

(a) *General rule.* — The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return.)

(b) *Date fixed for payment of tax.* — The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(c) *Terms of extension.* — Any extension of time for payment of tax under this section may be granted upon such terms as the tax commissioner may, by regulation, prescribe or by contract require.

§11-13A-15. Signing of returns and other documents.

(a) *General.* — Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) *Signing of corporation returns.* — The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) *Signing of partnership returns.* — The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) *Signature presumed authentic.* — The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(e) *Verification of returns.* — Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-13A-16. Bond of taxpayer may be required.

(a) Whenever it is deemed necessary to ensure compliance with this article, the tax commissioner may require any taxpayer to post a cash or corporate surety bond.

(b) The amount of the bond shall be fixed by the tax commissioner but, except as provided in subsection (c) of this section, shall not be greater than three times the average quarterly liability of taxpayers filing returns for quarterly periods, five times the average monthly liability of taxpayers required to file returns for monthly periods, or two times the average periodic liability of taxpayers

permitted or required to file returns for other than monthly or quarterly periods.

(c) Notwithstanding the provisions of subsection (b) of this section, no bond required under this section shall be less than five hundred dollars.

(d) The amount of the bond may be increased or decreased by the tax commissioner at any time subject to the limitations provided in this section.

(e) The tax commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer's business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid. Such action may be brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.

§11-13A-17. Collection of tax; agreement for processor to pay tax due from severor.

(a) General. -- In the case of natural resources, other than natural gas, where the tax commissioner finds that it would facilitate and expedite the collection of the taxes imposed under this article, the tax commissioner may authorize the taxpayer processing the natural resource to report and pay the tax which would be due from the taxpayer severing the natural resources. The agreement shall be in such form as the tax commissioner may prescribe. The agreement must be signed: by the owners, if the taxpayers are natural persons; in the case of a partnership or association, by a partner or member; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application. The agreement may be terminated by any party to the agreement upon giving thirty days' written notice to the other parties to the agreement: Provided, That the tax commissioner may terminate the agreement immediately upon written notice to the other parties when either the taxpayer processing the natural resource or the taxpayer severing the natural resource fails to comply with the terms of the agreement.

(b) Natural gas. --

(1) In the case of natural gas, except for those cases:

(A) Where the person severing (or both severing and processing)

the natural gas will sell the gas to the ultimate consumer, or

(B) Where the tax commissioner determines that the collection of taxes due under this article would be accomplished in a more efficient and effective manner through the severor, or severor and processor, remitting the taxes; the first person to purchase the natural gas after it has been severed, or in the event that the natural gas has been severed and processed before the first sale, the first person to purchase the natural gas after it has been severed and processed, shall be liable for the collection of the taxes imposed by this article. He shall collect the taxes imposed from the person severing (or severing and processing) the natural gas, and he shall remit the taxes to the tax commissioner. In those cases where the person severing (or severing and processing) the natural gas sells the gas to the ultimate consumer, the person so severing (or severing and processing) the natural gas shall be liable for the taxes imposed by this article. In those cases where the tax commissioner determines that the collection of the taxes due under this article from the severance (or severance and processing) of natural gas would be accomplished in a more efficient and effective manner through the severor (or severor and processor) remitting the taxes, the tax commissioner shall set out his determination in writing, stating his reasons for so finding, and so advise the severor (or severor and processor) at least fifteen days in advance of the first reporting period for which such action would be effective.

(2) On or before the last day of the month following each taxable calendar month, each person first purchasing natural gas as described in subdivision (1) above, shall report purchases of natural gas during the taxable month, showing the quantities of gas purchased, the price paid, the date of purchase, and any other information deemed necessary by the tax commissioner for the administration of the tax imposed by this article, and shall pay the amount of tax due, on forms prescribed by the tax commissioner.

(3) On or before the last day of the month following each taxable calendar month, each person severing (or severing and processing) natural gas, shall report the sales of natural gas, showing the name and address of the person to whom sold, the quantity of gas sold, the date of sale, and the sales price on forms prescribed by the tax commissioner.

§11-13A-18. Records.

(a) Every taxpayer liable for reporting or paying tax under this

article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

§11-13A-19. General procedure and administration.

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13A-20. Criminal penalties.

Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13A-21. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§11-13A-22. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of July, one thousand nine hundred eighty-six, respectively, unless an extension

is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven were in force and effect, as to such taxpayer during the informational tax year: *Provided*, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine-hundred eighty-seven, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-1. Short title; arrangement and classification.

This article may be cited as the "Telecommunications Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.

§11-13B-2. Definitions.

(a) *General.*—When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) *Terms defined.*

(1) *Business*.—The term “business” shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.

(2) *Communications channel*.—The term “communications channel” or “channel” means the smallest discrete circuit or other means whereby a message, conversation, data set or signal may be communicated, which cannot be subdivided without destroying or diminishing its capacity to carry such communications.

(3) *Communications pathway*.—The term “communications pathway” means any conduit, wire, cable, microwave signal path, radio signal path or other pathway over which telecommunications can be carried. The length of the communications pathway of satellite repeater facilities or other satellite communications facilities is deemed to be the shortest distance over the surface of the earth between the point on the earth from which signals are sent to the satellite and the point on the earth where such signals are received from the satellite.

(4) *Delegate*.—The term “delegate” in the phrase “ or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(5) *Gross income*.—The term “gross income” of a telephone company or communications carrier shall be defined as all gross income received from the provision of local exchange or long distance voice or data communications services but shall not include gross income from the provision of network access, billing or similar services provided to end users, other telephone companies, or communications carriers.

(6) *Person*.—The term “person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(7) *Sale*.—The term “sale” includes any transfer of the ownership or title to property or any provision of a service, whether for money or in exchange for other property or services, or a combination

thereof.

(8) *Tax commissioner*.—The term “tax commissioner” means the tax commissioner of the state of West Virginia, or his delegate.

(9) *Taxable year*.—The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of the article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(10) *Taxpayer*.—The term “taxpayer” means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in telecommunications business activity.

(11) *Telecommunications*.—The term “telecommunications” means all telephone, radio, light, light wave, radio telephone, telegraph and other communication, or means of communication, whether used or voice communication, computer data transmission, or other encoded symbolic information transfers. The term shall not include commercial broadcast radio or television, cable television or amateur or citizen’s band radio.

§11-13B-3. Tax imposed on telecommunications businesses; effective date.

(a) *Tax imposed*.—Upon every telecommunications business selling or furnishing telegraph, telephone or other telecommunications service, there is hereby imposed an annual privilege tax on account of the business, or other activities, of the taxpayer engaged in or carried on within this state, during the taxable year. The amount of taxes due shall be determined by application of rates against gross income, as specified in subsection (b) for telecommunications business effective on and after the first day of July, one thousand nine hundred eighty-seven.

(b) *Tax rate*.—The liability of a taxpayer under this article shall be four percent of the sum of:

(A) Its gross income from all telecommunications business beginning and ending within this state, and

(B) Its gross income apportioned to this state from all telecommunications business that either begins or ends in this state.

(c) *Exemptions.*—This section shall not apply to telecommunications services provided by municipalities, or by any other political subdivisions of this state.

(d) *Apportionment of certain income of telecommunications companies.*—Gross revenues of telecommunications companies derived from one point business in this state shall be apportioned to the state of West Virginia in the same proportion that the length of such company's communications pathways, weighted by the number of channels such pathways are capable of carrying, in West Virginia bears to the total length of such company's communications pathways, weighted by the number of channels such pathways are capable of carrying, located everywhere in the United States, its territories, and possessions.

§11-13B-4. Accounting periods and methods of accounting .

(a) *Taxable year.*—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Change of taxable year.*—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) *Methods of accounting.*

(1) *Same as federal.*—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) *Change of accounting methods.*—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

§11-13B-5. Annual return.

On or before the expiration of one month after the end of the

taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and computing the amount of taxes due under this article for the taxable year.

§11-13B-6. Periodic installment payments of tax.

(a) *General rule.*—Taxes levied under this article shall be due and payable in periodic installments as follows:

(1) *Tax of more than \$1,000 per month.*—For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner and the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for such year.

(2) *Tax of \$1,000 per month or less.*—For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued.

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of the tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of any annual exemption allowed for such year.

(b) *Exception.*—Notwithstanding the provisions of subsection (a)

of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

§11-13B-7. Extension of time for filing returns.

The tax commissioner may, upon written request received on or prior to the due date of the annual return or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer.

§11-13B-8. Extensions of time for paying tax.

(a) *Amount determined on return.*—The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or for any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) *Amount determined as deficiency.*—Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) *No extension for certain deficiencies.*—No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-13B-9. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: *Provided*, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

§11-13B-10. Time and place for paying tax shown on returns.

(a) *General rule.*—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Date fixed for payment of tax.*—The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(c) *Terms of extension.*—Any extension of time for payment of tax under this section may be granted upon such terms as the tax commissioner may by regulation prescribe, or by contract require.

§11-13B-11. Signing of returns and other documents.

(a) *General.*—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) *Signing of corporation returns.*—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) *Signing of partnership returns.*—The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) *Signature presumed authentic.*—The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(e) *Verification of returns.*—Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-13B-12. Records.

(a) Every taxpayer liable for reporting or paying taxes under this article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement.

§11-13B-13. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven were in force and effect, as to such taxpayer during the informational tax year: *Provided*, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-

seven, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

§11-13B-14. Preservation of rights and the liabilities of taxpayers.

Tax liabilities, if any arising for taxable years or portions thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if the taxes imposed by article twelve-a of this chapter had not been repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

§11-13B-15. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13B-16. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13B-17. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

(a) *Business and occupation tax credit.*—A credit shall be allowed against the tax imposed by section three [§11-21-3] of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this Code: *Provided*, That the amount of such business and

occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

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

(b) *Carrier income tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-A, chapter eleven of this Code: *Provided*, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax under article twelve-A was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article twelve-A shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

(c) *Severance tax credit.*—On and after the first day of July, one thousand nine hundred eighty-seven, a credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen-A, chapter eleven of this code: *Provided*, That the amount of such severance tax credit shall not

exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-A was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen-a shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-1. Legislative finding.

This business franchise tax on corporations and partnerships is enacted pursuant to the provision of article X, section one of the constitution of this state, granting to the Legislature the authority to tax privileges, franchises and incomes of persons and corporations. The Legislature finds and declares that this franchise tax is imposed on the privilege of doing business in this state, and that this tax is not an ad valorem property tax imposed on the property of corporations and partnerships doing business in this state.

§11-23-2. Short title; arrangement of sections or portions thereof.

This article shall be known and may be cited as the "Business Franchise Tax Act." No inference, implication or presumption of legislative construction or intent shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect shall be given to any descriptive matter or heading relating to any part, section, subsection or paragraph of this article.

§11-23-3. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in this section shall have the meanings ascribed to them herein unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.

(b) *Terms defined.*

(1) *Business income.* — The term “business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations.

(2) *Capital.* — The term “Capital” of a taxpayer shall mean:

(A) In the case of a corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and unappropriated;

(iv) Less the cost of treasury stock.

(B) In the case of a partnership, the average of the beginning and ending year balances of the value of partner’s capital accounts from Schedule L of federal Form 1065, as filed by the taxpayer with the Internal Revenue Service for the taxable year.

(C) *Additional items in capital.* — The term “Capital” for purposes of this article shall include such additional items from the accounts of the taxpayer as the tax commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(D) Allowance for certain government obligations and obligations secured by residential property. As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the beginning and ending account balances for the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

(a) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the

authority of the United States Congress for the purpose of implementing or furthering an objective of national policy, which is specifically made exempt from state taxes by federal law;

(b) Obligations of this state and any political subdivision of this state;

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

(d) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the beginning and ending year balances of the total assets of the taxpayer as shown on Schedule L of the Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

(3) *Commercial domicile.* — The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(4) *Commissioner or tax commissioner.* — The terms “commissioner” or “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) *Compensation.* — the term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) *Corporation.* — The term “corporation” includes any corporation, S corporation, joint-stock company, and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) *Delegate.* — The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulations promulgated thereunder.

(8) *Doing business.* — The term “doing business” means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except the activity of agriculture and farming, which shall mean the production of food, fiber, and woodland products (but not timbering activity), by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apairy, equine, or poultry husbandry, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping, and marketing, but not including any manufacturing, milling, or processing of such products by persons other than the producer thereof.

The activity of agriculture and farming shall mean not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least one thousand dollars of products per annum through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.

(9) *Domestic corporation.* — The term “domestic corporation” means a corporation organized under the laws of this state, and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

(10) *Federal Form 1120.* — The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038 or 6046 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(11) *Federal form 1065.* — The term “federal form 1065” means the annual federal income tax return of a partnership made pursuant to Section 6031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws

of the United States, in respect to the taxable income of a partnership, and filed with the Federal Internal Revenue Service.

(12) *Fiduciary*. — The term "fiduciary" means, and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(13) *Financial organization*. — The term "financial organization" includes any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent of the assets of which consist of intangible personal property and at least ninety percent of the gross receipts of which consist of dividends, interest and other charges derived from the use of money or credit.

(14) *Fiscal year*. — The term "fiscal year" means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(15) *Includes and including*. — The term "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(16) *Parent and subsidiary corporations*. — A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the "parent corporation" and the corporation which is so owned by the parent is defined to be a "subsidiary corporation."

(17) *Partnership and partner*. — The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not, a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

(18) *Person*. — The term "person" includes any corporation or partnership.

(19) *Pro forma return*. — The term "pro forma return" when used in this article means the return which the taxpayer would have filed

with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(20) *Sales*. — The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(21) *State*. — The term “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.

(22) *Stock*. — The term “stock” includes shares in a corporation, association or joint stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. “Stock owned by a corporation” shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) *Taxable year*. — The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year (short taxable year) under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(24) *Taxable in another state*. — The term “taxable in another state” for purposes of apportionment under this article, means a taxpayer who:

(A) 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

(B) Would be subject to a net income tax if such other state imposed such a tax.

(25) *Taxpayer*. — The term “taxpayer” means any person (as defined in this section) subject to the tax imposed by this article.

(26) *This code*. — The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(27) *This state*. — The term “this state” means the State of West Virginia.

(28) *Treasury stock*. — The term “treasury stock” means shares of a corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not been

cancelled or restored to the status of authorized but unissued shares. Treasury stock is deemed to be issued shares, but not outstanding shares.

(c) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States, or to the Internal Revenue Code, or to the federal income tax law shall mean the provisions of the laws of the United States as related to the determination of income for federal income tax purposes as in effect on the first day of January, one thousand nine hundred eighty-five.

§11-23-4. Tax base determined.

The tax base of a taxpayer, for purposes of this article, shall be its capital, as defined and adjusted in section three of this article. If the taxpayer is also taxable in another state, then the tax base of the taxpayer shall be its capital, as defined in section three of this article, multiplied by its apportionment factor determined under section five of this article.

§11-23-5. Apportionment of tax base.

(a) A taxpayer subject to the tax imposed by this article and also taxable in another state shall, for the purposes of this tax, apportion its tax base to this state by multiplying its tax base by a fraction, the numerator of which is the sum of the property factor, plus the payroll factor, plus two times the sales factor, all of which shall be determined as hereinafter provided in this section, and the denominator of which is four.

(b) Property factor. -- The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year, and the denominator of which is the average value of all real and tangible personal property owned or rented by the taxpayer and used by it during the taxable year, which is reported on schedule L of federal form 1120 (or 1065 for partnerships), plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(c) Value of property. -- Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: Provided, That

where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the net annual rental rate. Net annual rental rate is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of the property and includes:

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

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(d) *Leasehold improvements.* — Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(e) *Average value of property.* — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided,* That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(f) *Payroll factor.* — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer, and the denominator of which is the total compensation paid by the taxpayer during the taxable year as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(g) *Compensation.* — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only the amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly to employees include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

(h) *Employee.* — The term “employee” means:

(1) Any officer of a corporation; or

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

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

(1) The employee’s service is performed entirely within the state;

(2) The employee’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. The word “incidental” means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

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

(A) The employee’s base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(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 employee’s residence is in this state.

The term “base of operations” is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade

or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(j) *Sales factor.* — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year, less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, and reflected in its gross income reported and as appearing on the taxpayer's federal form 1120 or 1065, and consisting of those certain pertinent portions of the (gross income) elements set forth.

(k) *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.

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

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

(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.

(m) *Other methods of allocation.* —

(1) *General.* — If the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one of the factors;

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

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's tax base.

(2) Burden of Proof. -- In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or

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

§11-23-6. Imposition of tax.

(a) General. -- An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect of the benefits and protections conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation leasing property located in this state or doing business in this state and from every partnership owning or leasing property located in this state or doing business in this state, effective on and after the first day of July, one thousand nine hundred eighty-seven.

(b) Amount of tax and rate; effective date. -- On and after the first day of July, one thousand nine hundred eighty-seven, the amount of tax shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: Provided, That when the taxpayer's first taxable year under this article is a short taxable year, the taxpayer's liability shall be prorated based upon the ratio which the number of months in such short taxable year bears to twelve.

§11-23-7. Persons and organizations exempt from tax.

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

(a) Natural persons doing business in this state that are not doing

business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Such persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons.

(b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: *Provided*, That this exemption shall not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly in the generation of unrelated business income (as defined in the Internal Revenue Code) of any such corporation or organization if the unrelated business income is subject to federal income tax.

(c) Insurance companies which pay this state a tax upon premiums.

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

(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred eighty-five.

(f) Any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: *Provided*, That this exemption shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.

(g) Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code.

§11-23-8. Accounting periods and methods of accounting.

(a) *General rule.*—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Change of taxable year.*—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service with its return for the taxable year filed under this article.

(c) *Methods of accounting.*

(1) *Same as federal.*—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) *Change of accounting methods.*—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its return for the taxable year filed under this article.

§11-23-9. Annual returns.

(a) *In general.*—Every person subject to the tax imposed by this article shall make and file an annual return for the taxable year on or before the fifteenth day of the third month of the next succeeding taxable year. The annual return shall include such information as the tax commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) *Consolidated returns.*—Any corporation that files as part of an affiliated group for purposes of the tax imposed by article twenty-four of this chapter, shall file a consolidated return under this article.

(c) The tax commissioner may, at his discretion, require an affiliated group of corporations to file a consolidated tax return under this article in order to accurately determine the taxes due under this article.

§11-23-10. Extension of time for filing returns.

The tax commissioner may grant a reasonable extension of time for filing any returns or other document required by this article upon such terms as he may by regulations prescribe. An extension of time for filing Federal Form 1120, Federal Form 990T or Federal Form

1065 shall automatically extend the time for filing any return or other document required by this article for the same period as the extension for filing such federal form. An extension of time for filing a return shall not extend the time for payment of the tax.

§11-23-11. Time and place for paying tax shown on returns.

(a) *In general.*—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Date fixed for payment of tax.*—The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§11-23-12. Extensions of time for paying tax.

(a) *Amount determined on return.*—The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) *Amount determined as deficiency.*—Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) *No extension for certain deficiencies.*—No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-23-13. Declaration and payment of estimated tax.

(a) *Requirement of declaration.*—Every taxpayer subject to tax under this article shall file a declaration of estimated tax for the taxable year if the taxpayer's liability for tax under this article can

reasonably be expected to exceed twelve thousand dollars for the taxable year. A taxpayer not required by this section to file a declaration and pay estimated tax may elect to so file and pay.

(b) *Definition of estimated tax.*—The term “estimated tax” means the amount which a taxpayer estimates to be his liability under this article for the taxable year.

(c) *Contents of declaration.*—The declaration shall contain such information as the tax commissioner may, by rules or regulations, require, including, but not limited to, such detailed information as may be necessary to estimate the taxpayer’s liability under sections two and three of this article.

(d) *Time for filing declaration.*—A declaration of estimated tax shall be filed on or before the fifteenth day of the fourth month of the taxable year, for any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.

(e) *Amendment of declaration.*—A taxpayer may amend his declaration at any time during the taxable year in accordance with regulations prescribed by the tax commissioner. If any amendment of a declaration is filed by a taxpayer, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment. If any amendment is made after the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(f) *Payment of estimated tax.*—The estimated tax shall be paid in four equal installments. At the time the declaration of estimated payment is filed, the taxpayer shall pay one fourth of the estimated tax liability for the taxable year. The second, third and fourth installments shall be paid on the following fifteenth day of the sixth, ninth and twelfth months of the taxable year, respectively.

(g) *Application to short taxable year.*—This section shall apply to a taxable year of less than twelve months in accordance with regulations of the tax commissioner.

(h) *Installment paid in advance.*—Any taxpayer may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.

§11-23-14. Requirements concerning returns, notices, records and

statements.

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

(b) As a part of a full and complete tax return, the taxpayer shall provide:

(1) A copy of pages one through four of its signed, federal corporation income tax return or its signed federal partnership income tax return, as filed with the Internal Revenue Service for the taxable year; and

(2) If a consolidated federal income tax return was filed for the taxable year:

(A) Supporting schedules showing the consolidation of its income statement and balance sheets, including schedules supporting any eliminations and adjustments made to the income statement and balance sheets;

(B) A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership; and

(C) A signed statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal consolidated filing purposes and the income statement and the balance sheet reported to this state under the tax imposed by this article.

(c) *Notice of qualification as receiver, etc.*

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commissioner, as may be required by regulation.

§11-23-15. Signing of returns and other documents.

(a) *General.*—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax

commissioner.

(b) *Signing of corporation returns.*—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) *Signature presumed authentic.*—The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(d) *Verification of returns.*—Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-23-16. Place for filing returns or other documents.

Tax returns, statements or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivering it, in person or by mail, to his office in Charleston, West Virginia: *Provided*, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements or other documents, or copies thereof.

§11-23-17. Credits against tax.

(a) A credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, (determined before application of credits) multiplied by a fraction, the numerator of which is the gross income of the business subject to tax under article thirteen-a, of this chapter and the denominator of which is the total amount of gross income derived by the taxpayer from all activity in West Virginia.

(b) A parent taxpayer who files a separate return under this article shall be allowed a credit against such taxpayer's liability for the tax under this article for the amount of net taxes that would have been paid without regard to the adjustment required by subparagraph (D), paragraph (2), subsection (b), section three of this article for the taxable year by a subsidiary corporation or partnership: *Provided*,

That the amount of credit allowed shall not exceed the amount of tax that would have been paid, without regard to such adjustment, under this article by the subsidiary or partnership, multiplied by the percentage of the parent's ownership of the subsidiary corporation or partnership. In the case of corporations, this percentage shall be equal to the percentage of stock of all classes owned by the parent. In no case shall any credit allowable by this section, which is not used on an annual return, be carried forward or back, but instead the same shall be forfeited.

(c) A credit shall be allowed against the tax imposed by this article equal to the amount of liability of the taxpayer for the taxable year of the full amount of any tax imposed under sections fourteen and fourteen-a, article three of this chapter.

§11-23-18. Tax under this article in addition to all other taxes.

The returns, requirements and taxes set forth and imposed under this article shall be in addition to all other reports, requirements, taxes and duties set forth and imposed by this state.

§11-23-19. Records.

(a) Every taxpayer liable for reporting or paying taxes under this article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement.

§11-23-20. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-23-21. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said

act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-23-22. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§11-23-23. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for the tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven were in force and effect, as to such taxpayer during the informational tax year: *Provided*, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-

seven, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms.

(a) *General.* — Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States related to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-five, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-four, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred eighty-five, shall be given effect.

(b) *Certain terms defined.* — For purposes of this article:

(1) *Business income.* — The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) *Commercial domicile.* — The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

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

(4) *Corporation.* — The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

(5) *Delegate.* — The term "delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by

the tax commissioner directly, or indirectly, by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulation promulgated thereunder.

(6) *Domestic corporation.* — The term “domestic corporation” means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

(7) *Engaging in business.* — The term “engaging in business” or “doing business” means any activity of a corporation which enjoys the benefits and protection of government and laws of this state.

(8) *Federal Form 1120.* — The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038 or 6046 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(9) *Fiduciary.* — The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(10) *Fiscal year.* — The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(11) *Includes and including.* — The terms “includes and including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(12) *Nonbusiness income.* — The term “nonbusiness income” means all income other than business income.

(13) *Person*. — The term “person” is to be deemed interchangeable with the term “corporation” in this section.

(14) *Pro forma return*. — The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(15) *Public utility*. — The term “public utility” means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

(16) *Sales*. — The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(17) *State*. — The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(18) *Taxable year*. — The term “taxable year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(19) *Tax*. — The term “tax” includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(20) *Tax commissioner*. — The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(21) *Taxpayer*. — The term “taxpayer” means a corporation subject to the tax imposed by this article.

(22) *This code*. — The term “this code” means the code of West Virginia.

(23) *This state*. — The term “this state” means the state of West Virginia.

(24) *West Virginia taxable income*. — The term “West Virginia taxable income” means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in section six of this article: *Provided*, That in the case of a corporation having income from business activity which is taxable without this state, its “West Virginia taxable income” shall be such portion of its taxable income

as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven of this article.

§11-24-4. Imposition of primary tax and rate thereof; imposition of additional, temporary surtax; effective and termination dates.

(a) *Primary tax.*

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

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

(A) On taxable income not in excess of fifty thousand dollars, the rate of six percent; and

(B) On taxable income in excess of fifty thousand dollars, the rate of seven percent.

(3) In the case of taxable periods beginning on or after the first day of July, one thousand nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property activity or other sources in this state, except corporations exempt under section five, at the rate of nine and three quarters percent. Beginning the first day of July, one thousand nine hundred eighty-eight, the rate shall be reduced by fifteen one hundredths (.15) of one percent per year for five successive years, with such rate to be nine percent (9.0) on and after the first day of July, one thousand nine hundred ninety-two.

(b) *Temporary surtax.* — In addition to the primary tax imposed, determinable and with exemptions, as aforesaid, there is hereby imposed an additional tax, a temporary surtax, of fifteen percent of the determined primary tax liability (as determined prior to application of any credits allowable under section nine of this article), and with such additional, temporary surtax being hereby made effective and applicable to taxable years or portions thereof beginning on and after the first day of January, one thousand nine hundred eighty-three, with such additional temporary surtax to expire, be nullified and be of no further force or effect whatsoever after the thirtieth day of June, one thousand nine hundred eighty-five. Section four-a of this article, applicable to the effect of any rate changes during a taxable year, shall be construed to include and also be applicable to this surtax or any change of such surtax hereafter occurring during a taxable year. Corporations exempt under section five of this article from the primary tax, as imposed, are hereby made exempt from the additional temporary surtax as imposed.

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

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

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

(b) Insurance companies which pay this state a tax upon premiums.

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

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

(e) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven),

as amended prior to the first day of January, one thousand nine hundred sixty-seven.

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

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

(b) *Adjustments increasing federal taxable income.* — There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items except that adjustment (5) shall be required only with respect to tax periods ending after the thirty-first day of December, one thousand nine hundred eighty-one:

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

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal taxable income and not credited against federal income tax, and the taxes imposed by this state for which credit against the taxes imposed by section four is allowed by section nine;

(4) Interest charges directly incurred in the carrying of securities whose income is not taxable under this article, to the extent deductible in determining federal taxable income; and

(5) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal taxable income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property; three-year property — no modifications; five-year property — ten percent; ten-year property — fifteen percent; fifteen-year public

utility property — twenty-five percent; and fifteen-year or eighteen year real property — thirty-five percent: *Provided*, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method, or to any taxable year beginning after the first day of July, one thousand nine hundred eighty-seven.

(c) *Adjustments decreasing federal taxable income.* — There shall be subtracted from federal taxable income:

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

(2) The amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(3) The amount of dividends received, to the extent included in federal taxable income: *Provided*, That this modification shall not be made for taxable years beginning after the first day of July, one thousand nine hundred eighty-seven, and

(4) Thirty-seven and one-half percent of the excess of net long-term capital gain over net short-term capital loss as defined in the laws of the United States: *Provided*, That this modification shall not be made for taxable years beginning after the first day of July, one thousand nine hundred eighty-seven.

(d) *Adjustment resulting from recomputation of net operating loss deduction.* — In determining the West Virginia taxable income of a corporation entitled to a net operating loss deduction for the taxable year for federal income tax purposes, there shall be added to or subtracted from the federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction in which the adjustments required by subsections (b) and (c) are made for each taxable year involved in the computation of such net operating loss deduction.

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

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

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in section 48 (h)(12)(B) and (C) of the Internal Revenue Code, and

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

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

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

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

(1) The numerator of which is the sum of the average of the beginning and ending account balances for the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy, which is specifically made exempt from state taxes by federal law;

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

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

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

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

§11-24-7. Allocation and apportionment.

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

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

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax, or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does

not subject the taxpayer to such tax.

(c) *Business activities entirely within West Virginia.* — If the business activities of a taxpayer take place entirely within this state, and if such taxpayer is not taxable in another state, entire net income of such taxpayer is subject to the tax imposed by this article.

(d) *Business activities partially within and partially without West Virginia; allocation of nonbusiness income.* — If the business activities of a taxpayer take place partially within and partially without this state and such taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4).

(1) *Net rents and royalties.*

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

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

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

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

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

(2) *Capital gains.*

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

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

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

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

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

(D) Gains pursuant to section 631 (a) and (b) of the Internal Revenue Code of 1954, as amended, shall be considered business income for purposes of this article.

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

(4) *Patent and copyright royalties.*

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

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

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

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

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

(e) *Business activities partially within and partially without this state; apportionment of business income.* — All net income, after

deducting those items specifically allocated under subsection (d), shall be apportioned to this state by multiplying such net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(1) *Property factor.* — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) *Value of property.* — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: *Provided*, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

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

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) *Leasehold improvements.* — Leasehold improvements shall, for purposes of the property factor be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor

upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(4) *Average value of property.* — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided*, That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(5) *Payroll factor.* — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(6) *Compensation.* — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

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

(A) Any officer of a corporation; or

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

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

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

or

(B) The employee's service is performed both within and without

this state, but the service performed without the state is incidental to the individual's service within this state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

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

(i) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(9) *Sales factor.* — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year, less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120, and consisting of those certain pertinent portions of the (gross income) elements set forth.

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

(A) 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

(B) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and

(i) The purchaser is the United States government; or

(ii) The taxpayer is not taxable in the state of the purchaser.

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

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

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

(f) *Income producing activity.* — The term “income producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. Such activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income producing activity” includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service,

(2) The sale, rental, leasing, licensing or other use of real property,

(3) The rental, leasing, licensing or other use of tangible personal property,

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, in itself, an income producing activity.

(g) *Cost of performance.* — The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment.

(1) *General.* — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer’s business activities in this state, the taxpayer may petition for, or the tax commissioner may require, in respect to all or any part of the taxpayer’s business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

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

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income.

(2) *Alternative method for public utilities.* — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, as an alternative to the other methods provided for in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) *Burden of proof.* — In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) or (2) of this subsection is sought on the ground that the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or

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

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

(a) *Credit for primary taxes imposed under article thirteen, chapter eleven of this code.* — A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: *Provided,* That the amount of such business and occupation tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under

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

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

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

carrier income tax liability for the taxable year, which was taken as a deduction on its federal return for the taxable year.

(c) *Expiration of credits.* — The credits authorized in subsections (a) and (b) of this section, shall expire and not be authorized or allowed for any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.

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

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

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

§11-24-13. Returns; time for filing.

On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under this article shall be made and filed by or for every corporation subject to the tax

imposed by this article.

§11-24-13a. Method of filing for business taxes.

(a) *Privilege to file.* — An “affiliated group” of corporations (as defined for purposes of filing a consolidated federal income tax return), shall subject to the provisions of this section and in accordance with any regulations prescribed by the tax commissioner, have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group and which are included in such return consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) *Election binding.* — If an affiliated group of corporations elects to file a consolidated return under this article for any taxable year ending after June thirtieth, one thousand nine hundred eighty-seven, such elections once made, shall not be revoked for any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

(c) *Method of filing under this article deemed controlling for filing under other business taxes articles.* — The taxpayer shall file on the same basis under articles thirteen-a, thirteen-b, and twenty-three of this chapter as such taxpayer has filed pursuant to this article. Such filing method may not be changed in respect of this article or articles thirteen-a, thirteen-b or twenty-three of this chapter without the written consent of the tax commissioner.

(d) *Regulations.* — The tax commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the tax commissioner deems necessary to clearly reflect the income tax liability and the income factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(e) Computation and payment of tax. -- In any case in which a consolidated return is filed, or is required to be filed, the tax due under this article from the affiliated group, shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the tax commissioner, in effect on the last day prescribed by law for the filing of such return, and such affiliated group shall be treated as the taxpayer.

(f) Consolidated return required. -- If any affiliated group of corporations has not elected to file a consolidated return, the tax commissioner may require such corporations to make a consolidated return in order to clearly reflect the taxable income of such corporations.

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

Every corporation electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended, shall on or before the fifteenth day of the third month following the close of the taxable year file an information return for each tax year, stating specifically the items of its gross income and the deductions allowable, the names and addresses of all persons owning stock in the corporation at any time during the tax year, the number of shares of stock owned by each shareholder at all times during the tax year, the amount of money and other property distributed by the corporation during the tax year to each shareholder, the date of each such distribution, and such other information as the tax commissioner may prescribe. Corporations failing to file information returns by the due date as prescribed in this section shall be subject to a penalty of fifty dollars for each failure to file, with such penalty being collected as other penalties are collected by the tax commissioner. This section shall take effect for tax years beginning on or after the first day of July, one thousand nine hundred seventy-two.

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

(a) General. -- The tax commissioner may prescribe regulations as to the keeping of records, the contents and form of returns and

statements, and the filing of copies of federal income tax returns and determinations. The tax commissioner may require any corporation, by regulation or notice served upon such corporation, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such corporation is liable under this article for tax.

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

(c) *Notice of qualifications as receiver, etc.* — Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commissioner, as may be required by regulation.

(d) *Federal return information.* — As part of a full and complete tax return, the taxpayer shall provide:

(1) A copy of pages one through four of its signed, federal corporation income tax return or its signed federal partnership income tax return, as filed with the Internal Revenue Service for the taxable year; and

(2) If a consolidated federal income tax return was filed for the taxable year:

(A) Supporting schedules showing the consolidation of its income statement and balance sheets, including schedules supporting any eliminations and adjustments made to the income statement and balance sheets;

(B) A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership and

(C) A signed statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal, consolidated filing purposes and the income statement

and the balance sheet reported to this state under the tax imposed by this article.


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

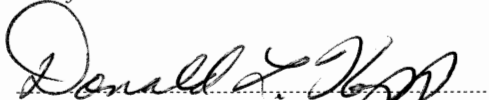

Chairman Senate Committee



Chairman House Committee

Originating in the House.

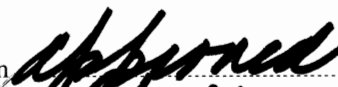



Takes effect 90 days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within  this the 
day of  1985.

Governor

PRESENTED TO THE

GOVERNOR

THIRD

RECEIPT

Date

4/13/85

A.T.

Time

9:39 p.m.