WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED

SENATE BILL NO. 536

(By Senators ...)

PASSED March 19, 1987

In Effect July 1, 1987
AN ACT to amend article nine, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto five new sections, designated sections one, two, three, four and five; to amend and reenact section two, article nine, chapter eleven of said code; to amend article twelve-a of said chapter eleven by adding thereto a new section, designated section twenty-five; to amend and reenact sections two-d, two-m and twenty-eight, article thirteen of said chapter; to further amend said article thirteen by adding thereto a new section, designated section thirty-one; to amend and reenact sections two, three and four, article thirteen-a of said chapter; to further amend said article thirteen-a by adding thereto a new section, designated section twenty-four; to amend and reenact section two, article thirteen-b of said chapter; to further amend said article thirteen-b by adding thereto a new section, designated section eighteen; to amend and reenact sections two, four-b, five, six and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto four new sections, designated sections five-a, nine-b, nine-c and nine-d; to amend and reenact sections two, three and eighteen, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto three new sections, designated sections three-b, three-c and three-d; to
amend and reenact sections four-e, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one and seventy-four, article twenty-one of said chapter; to further amend said article twenty-one by adding thereto two new sections, designated sections four-f and forty-three; to amend and reenact sections three, seven, nine, thirteen and seventeen, article twenty-three of said chapter; to further amend said article twenty-three by adding thereto a new section, designated section twenty-five; to amend and reenact sections three-a, six and seven, article twenty-four of said chapter; and to further amend said article twenty-four by adding thereto a new section, designated section twenty-three, all relating to enacting the West Virginia tax reform act of 1987; creating voluntary check-off designation for personal income acts refund to gild the capitol dome; creating special fund therefor and specifying use of fund; making certain technical changes in tax laws; creating limited credit for consumers sales and service tax and use tax paid on certain exempt sales against annual tax on incomes of certain carriers, business and occupation tax, severance tax, telecommunications tax; personal income tax, business franchise tax, corporation net income tax or payments for personal income tax withholding; exempting from business and occupation tax gross receipts from sales of certain electric power used in the manufacture of ferroalloy in this state; exempting from business and occupation tax gross receipts from certain sales of natural gas for use in in-state chemical manufacturing; providing business and occupation tax transition rule for persons who employ certain accounting methods; defining certain terms relating to limestone and sandstone for purposes of severance tax; technical changes in severance tax rates; defining the extent of the privilege of severing and producing limestone and sandstone; technical change defining certain terms in telecommunications tax including "gross receipts" and effective date; modifying certain definitions in consumers sales and service tax; defining certain terms in consumers sales and service tax including "directly used or consumed," "contracting," "manufacturing," "transportation," "transmission," "communication" and "production of natural resources"; modifying cross references relating to consumers sales and
service tax and use tax exemption certificates; allowing a certain discount for vendors collecting consumers sales and service tax; creating an exemption to prohibition of profit accruing to person as a result of collection of such tax; modifying exemptions from consumers sales and service tax and use tax by limiting exemptions granted to persons engaged in the businesses of contracting, manufacturing, transportation, transmission, communication or production of natural resources to property or services directly used or consumed in various activities and by providing effective date; removing exemption for sales and services rendered for use in the business of selling tangible personal property and effective date; exempting from consumers sales and service tax certain sales to persons subject to business and occupation tax, severance tax, and telecommunications tax; exempting from consumers sales and service tax sales of propane to consumers for poultry house heating purposes and providing method by which seller may apply for refund; exempting from consumers sales and service tax certain sales of tangible personal property paid for with food stamps and effective date; exempting from consumers sales and service tax sales of tickets for certain school-sponsored activities; exempting from consumers sales and service tax sales of electronic data processing services and relating software and definitions thereof; providing for method of claiming consumers sales and service tax and use tax exemptions, refunds of tax, and credit against other taxes; providing for delivery of consumers sales and service tax and use tax exemption certificates by certain persons in lieu of tax; providing for direct pay permits to be issued by the tax commissioner; imposing use tax on taxable services and effective date; limiting use tax exemption provided for use of property and services by certain businesses; changing rate of personal income tax and effective date; updating Internal Revenue Code references; changing definition of West Virginia taxable income; eliminating reference to West Virginia deduction in personal income tax for resident and nonresident individuals; modifying definition of West Virginia adjusted gross income in personal income tax; changing personal income tax modifications increasing and reducing adjusted gross income; eliminating personal income tax deductions of resident and nonresident individuals and effective date; increasing amount of West
Virginia personal exemption in personal income tax to two thousand dollars per exemption and effective date; providing additional personal exemption for certain surviving spouses; limiting ability of husband and wife to file separate West Virginia personal income tax returns; modifying deductions in business franchise tax; making technical changes; providing that partnerships must file annual business franchise tax returns for taxable year on the fifteenth day of the fourth month of the next succeeding taxable year; modifying cross references in business franchise tax; allowing certain credit against business franchise tax for businesses subject to the business and occupation tax; modifying certain definitions relating to the corporation net income tax; modifying certain adjustments in determining West Virginia taxable income for corporation net income tax purposes; and modifying the definition of income-producing activity for purposes of the corporation net income tax.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto five new sections, designated sections one, two, three, four and five; that section two, article nine, chapter eleven of said code be amended and reenacted; that article twelve-a of said chapter eleven be amended by adding thereto a new section, designated section twenty-five; that sections two-d, two-m and twenty-eight, article thirteen of said chapter be amended and reenacted; that said article thirteen of said chapter be further amended by adding thereto a new section, designated section thirty-one; that sections two, three and four, article thirteen-a of said chapter be amended and reenacted; that said article thirteen-a be further amended by adding thereto a new section, designated section twenty-four; that section two, article thirteen-b of said chapter be amended and reenacted; that said article thirteen-b be further amended by adding thereto a new section, designated section eighteen; that sections two, four-b, five, six and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto four new sections, designated sections five-a, nine-b, nine-c and nine-d; that sections two, three and eighteen, article fifteen-a be amended and reenacted; that said article fifteen-a be further amended by adding thereto three new sections,
designated sections three-b, three-c and three-d; that sections four-e, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one and seventy-four, article twenty-one of said chapter be amended and reenacted; that said article twenty-one be further amended by adding thereto two new sections, designated sections four-f and forty-three; that sections three, seven, nine, thirteen and seventeen, article twenty-three of said chapter be amended and reenacted; that said article twenty-three be further amended by adding thereto a new section, designated section twenty-five; that sections three-a, six and seven, article twenty-four of said chapter be amended and reenacted; and that said article twenty-four be further amended by adding thereto a new section, designated section twenty-three, all to read as follows:

CHAPTER  5A.  DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 9. VOLUNTARY GILDING THE DOME CHECK-OFF PROGRAM.

§5A-9-1. Legislative intent.
1 It is in the public interest to preserve and maintain the state capitol building for the use and benefit of the citizens of West Virginia. The intent of this legislation is to provide additional funding for the preservation and maintenance of the state capitol building, to be primarily used to refurbish the capitol dome with gold leaf.
2 The financing of this program will be derived from a voluntary check-off and contribution designation on state personal income tax return forms of a portion or all of a taxpayer's refund. The funding provided shall be supplemental to existing revenues.

1 (a) Each West Virginia individual income tax return form shall contain a designation as follows:
2 West Virginia Gilding the Dome Check-Off Program.
3 Check ( ) if you wish to designate $1, $5, $10 or more of your tax refund for this program. If joint return, check ( ) if spouse wishes to designate $1, $5, $10 or more.
4 (b) Each individual taxpayer desiring to contribute to the voluntary gilding the dome program may designate by
§5A-9-3. Contributions credited to special fund.

The tax department shall determine by the first day of July of each year the total amount designated pursuant to this legislation and shall report such amount to the state treasurer who shall credit such amount to a special department of finance and administration fund.

§5A-9-4. Use of funds.

The funds shall be used for the purpose of preserving and maintaining the dome of the capitol by the use of gold leaf in covering the dome. The commissioner of finance and administration shall on the fifteenth day of January each year furnish the Legislature with a report stating the amount of money that has been provided and how such moneys have been expended.

§5A-9-5. Effective date.

This article shall apply to all personal income tax returns required to be filed on or after the first day of July, one thousand nine hundred eighty-seven and before the first day of July, one thousand nine hundred ninety.

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 and estate 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 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-25. Credit for consumers sales and service tax and use
tax paid.

The tax imposed by this article shall be subject to the
credit set forth at section nine-b, article fifteen of this
chapter and the credit set forth at section three-b, article
fifteen-a of this chapter.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

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

(a) 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:
(1) Street and interurban and electric railways, one and
four-tenths percent;
(2) Water companies, four and four-tenths percent,
except as to income received by municipally owned water
plants;
(3) 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 and commercial lighting and
four percent on sales and demand charges for all other
presents, 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 of such
plant location exceeds two hundred thousand kilowatts per
hour in a year: Provided further, 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: And provided further, That the sale of
electric power under this section shall be exempt from the
tax imposed by section two if it is separately metered and
consumed in an electrolytic process for the manufacture of
chlorine in this state, or is separately metered and
consumed in the manufacture of ferroalloy in this state, and
the rate reduction herein provided to the taxpayer shall be
passed on to the manufacturer of the chlorine or ferroalloy.
As used in this section, the term “ferroalloy” means any of
various alloys of iron and one or more other elements used
as a raw material in the production of steel: And provided
further, That the term does not include the final production
of steel;

(4) Natural gas companies, four and twenty-nine
hundredths percent on the gross income: Provided, That the
sale of natural gas under this section shall be exempt from
the tax imposed by this section and section two of this
article to the extent that the natural gas is separately
metered and is gas from which the purchaser derives
hydrogen and carbon monoxide for use in the manufacture
of chemicals in this state, and the full economic benefit of
the exception herein provided to the taxpayer shall be
passed on to such purchaser of the natural gas. *Provided,
however,* That there shall be no exemption for the sale of
any natural gas from which the purchaser derives carbon
monoxide or hydrogen for the purpose of resale;

(5) Toll bridge companies, four and twenty-nine
hundredths percent; and

(6) Upon all other public service or utility business, two
and eighty-six hundredths percent.

(b) 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 service. The gross income of the taxpayer from any
other activity shall be included in the measure of the tax
imposed upon such other activity by the appropriate section
or sections of this article.

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

(1) Upon every person engaging or continuing within
this state in the business of generating or producing electric
dpower 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 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.

(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 municipally owned plants generating or producing electricity shall not be subject to tax under this article.


(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.
(g) Persons who keep their records using a method of
accounting other than the accrual method or cash method
shall file their returns in accordance with regulations and
instructions promulgated by the tax commissioner.

§11-13-31. Credit for consumers sales and service tax and use
tax paid.

The tax imposed by this article shall be subject to the
credit set forth at section nine-b, article fifteen of this
chapter and the credit set forth at section three-b, article
fifteen-a of this chapter.

ARTICLE 13A. SEVERANCE TAXES.


(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
predominantly 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) 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.

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

(D) 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 natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) 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 natural resources of
similar grade and quality and in the same condition
immediately preceding the processing of the natural
resources.

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

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

(H) For limestone or sandstone quarried or mined, gross
value is the value of such stone immediately upon severance
from the earth.

(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:

(A) Oil and natural gas shall not include any conversion
or refining process; and

(B) Limestone or sandstone quarried or mined shall not
include any treatment process or transportation after the
limestone or sandstone is severed from the earth.
(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, however, 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, 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
Enr. S. B. No. 536]

156 instances where contracts (either oral or written) are
157 entered into whereby persons, organizations or businesses
158 are engaged in the business of severing or processing (or
159 both severing and processing) a natural resource but do not
160 obtain title to or do not have an economic interest therein,
161 the party who owns the natural resource or has an economic
162 interest therein is the taxpayer.
163 (19) “This code” means the code of West Virginia, one
164 thousand nine hundred thirty-one, as amended.
165 (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-eight one hundredths
(3.88) percent;
July 1, 1989 — three and ninety-one 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
(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; and 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;
(4.068) percent; and
July 1, 1992 — and thereafter — four (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.
42 refining, polishing, fine pulverization, blending with other
43 materials, treatment effecting a chemical change, thermal
44 action and molding or shaping.
45 (c) Treatment processes considered part of production
46 of oil, natural gas and natural gas liquids. — The privileges
47 of severing and producing oil and natural gas shall not
48 include any conversion or refining process.
49 (d) Timber production privilege. — The privilege of
50 severing and producing timber shall end once the tree is
51 severed and delimbed.
52 (e) Limestone and sandstone quarried or mined
53 production privilege. — The privilege of severing and
54 producing limestone and sandstone by quarrying or mining
55 shall end once the limestone or sandstone is severed from
56 the earth.

§11-13A-24. Credit for consumers sales and service tax and use
tax paid.

1 The tax imposed by this article shall be subject to the
2 credit set forth at section nine-b, article fifteen of this
3 chapter and the credit set forth at section three-b, article
4 fifteen-a of this chapter.

ARTICLE 13B. TELECOMMUNICATIONS TAX.


1 (a) General. — When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) shall have the meanings ascribed to them by
4 this section, unless a different meaning is clearly required
5 by either the context in which the term is used, or by specific
6 definition.
7 (b) Terms defined.
8 (1) Business. — The term “business” shall include all
9 activities engaged in or caused to be engaged in with the
10 object of gain or economic benefit, either direct or indirect.
11 (2) Communications channel. — The term
12 “communications channel” or “channel” means the
13 smallest discrete circuit or other means whereby a message,
14 conversation, data set or signal may be communicated,
15 which cannot be subdivided without destroying or
16 diminishing its capacity to carry such communications.
17 (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: Provided, That on and after the first day of July, one thousand nine hundred eighty-eight, the term “gross income” of a telephone company or communications carrier shall not include gross income from the provision of commodities or services which shall be determined by the public service commission of West Virginia to be subject to competition. On or before the thirty-first day of December of each calendar year, the public service commission of West Virginia shall submit to the tax commissioner a listing of those commodities or services which it has determined to be subject to competition. Such listing shall constitute a conclusive determination for the purposes of defining “gross income” within the meaning of this subsection.

(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 for 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-18. Credit for consumers sales and service tax and use tax paid.**

The tax imposed by this article shall be subject to the credit set forth at section nine-b, article fifteen of this chapter and the credit set forth at section three-b, article fifteen-a of this chapter.

**ARTICLE 15. CONSUMERS SALES TAX.**

**§11-15-2. Definitions.**

For the purpose of this article:

(a) "Persons" shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator;
(b) "Tax commissioner" shall mean the state tax commissioner;

(c) "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted;

(d) "Sale," "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose;

(e) "Vendor" shall mean any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property;

(f) "Ultimate consumer" or "consumer" shall mean a person who uses or consumes services or personal property;

(g) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons;

(h) "Tax" shall include all taxes, interest and penalties levied hereunder;

(i) "Service" or "selected service" shall include all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale;

(j) "Purchaser" shall mean a person who purchases tangible personal property or a service taxed by this article;

(k) "Personal service" shall include those:

(1) Compensated by the payment of wages in the ordinary course of employment;

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as
nursing, barbering, shoe shining, manicuring and similar services;
(l) "Taxpayer" shall mean any person liable for the tax imposed by this article;
(m) "Drugs" shall include all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe.
(n) (1) "Directly used or consumed" in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall mean used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.
(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include only:
(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources or resulting from contracting activity;
(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources or which is the subject of contracting activity;
(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production, or production of natural resources or which is the subject of contracting activity;
(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;
(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;
(F) Directly and physically recording the flow of
property undergoing transportation, communication, transmission, manufacturing production or production of natural resources or which is the subject of contracting activity;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources or which is the subject of contracting activity or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(K) Maintenance or repair of property used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(L) Storage, removal or transportation of economic waste;

(M) Pollution control or environmental quality or protection activity and personnel, plant, product or community safety or security activity; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include, but not be limited to:

(A) Heating and illumination of office buildings;
(B) Janitorial or general cleaning activities;
(C) Personal comfort of personnel;
(D) Production planning, scheduling of work, or inventory control;
(E) Marketing, general management, supervision, finance, training, accounting and administration; or
(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity, rather than an integral and essential part of such activities.

(o) “Contracting” shall mean the furnishing of work, or both materials and work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. For purposes of this definition, the term “structure” shall include, but not be limited to, everything built up or composed of parts joined together in some definite manner and attached to real property, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.

(p) “Manufacturing” shall mean a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(q) “Transportation” shall mean the act or process of conveying, as a commercial enterprise, passengers of goods from one place or geographical location to another place or geographical location.

(r) “Transmission” shall mean the act or process of causing natural gas to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(s) “Communication” shall mean all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or
other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television.

(1) "Production of natural resources" shall mean the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.

§11-15-4b. Liability of purchaser; assessment and collection.

If any purchaser refuses to pay to the vendor the tax imposed by section three of this article, or in the case of a sale subject to section nine-c of this article, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not subject to this tax, or signs or presents to the vendor a false certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax, he shall be personally liable for the amount of tax applicable to the transaction or transactions.

In such cases the tax commissioner shall have authority to make an assessment against such purchaser, based upon any information within his possession or that may come into his possession. This assessment and notice thereof shall be made and given in accordance with sections seven and eight, article ten of this chapter.

This section shall not be construed as relieving the vendor from liability for the tax.

§11-15-5. Remittance of tax; discount.

No profit shall accrue to any person as a result of the collection of the tax levied by this article notwithstanding the total amount of such taxes collected may be in excess of the amount for which such person would be liable by the application of the levy of five percent to the gross proceeds of his sales, and the total of all taxes collected by any such person shall be returned and remitted to the tax commissioner, except that any person collecting and remitting such taxes in a timely manner as provided in section five-a of this article shall be entitled to the appropriate discount against the amount of tax payable by

In the event the taxes due and payable under this article are remitted by the vendor to the tax commissioner on or before the tenth day of the month next succeeding the month in which the tax accrued, the vendor who has remitted the tax collected in such manner is entitled to apply and discount against the amount of tax payable by him under this article an amount equal to two percent of the first one thousand dollars of tax collected and an amount equal to one percent of the tax collected over and above the first one thousand dollars of the tax collected.

The tax commissioner shall promulgate in accordance with chapter twenty-nine-a of this code such rules as are necessary to carry out the purposes of this section.

§11-15-6. Vendor must show sale or service exempt; presumption.

In the case of sales subject to section nine-c of this article, the burden of proving that a sale or service was exempt from the tax shall be upon the vendor, unless he takes from the purchaser an exemption certificate signed by and bearing the address of the purchaser and setting forth the reason for the exemption and substantially in the form prescribed by the tax commissioner. To prevent evasion, it shall be presumed that all sales and services are subject to the tax until the contrary is clearly established.


The following sales and services shall be exempt:

(a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;
(b) Sales of textbooks required to be used in any of the schools of this state;
(c) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;
(d) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code;
(e) Sales of property or services to churches and bona
fide charitable organizations who make no charge
whatsoever for the services they render: Provided, That the
exemption herein granted shall apply only to services,
equipment, supplies and materials directly used or
consumed by these organizations, and shall not apply to
purchases of gasoline or special fuel;

(f) Sales of property or services to corporations or
organizations qualified under section 501(c)(3) of the
Internal Revenue Code of 1986, as amended, or under
section 501(c)(4) of the Internal Revenue Code of 1986, as
amended, who make casual and occasional sales not
conducted in a repeated manner or in the ordinary course of
repetitive and successive transactions of like character:
Provided, That the exemption herein granted shall apply
only to services, equipment, supplies and materials directly
used or consumed in the activities for which such
organizations qualify as tax exempt organization under the
Internal Revenue Code by these organizations and shall not
apply to purchases of gasoline or special fuel;

(g) Sales of property or services to persons engaged in
this state in the business of contracting, manufacturing,
transportation, transmission, communication or the
production of natural resources: Provided, That the
exemption herein granted shall apply only to services,
machinery, supplies and materials directly used or
consumed in the businesses or organizations named above,
and shall not apply to purchases of gasoline or special fuel:
Provided, however, That on and after the first day of July,
one thousand nine hundred eighty-seven, the exemption
provided in this subsection shall apply only to services,
machinery, supplies and materials directly used or
consumed in the activities of contracting, manufacturing,
transportation, transmission, communication or the
production of natural resources in the businesses or
organizations named above and shall not apply to
purchases of gasoline or special fuel;

(h) An isolated transaction in which any tangible
personal property is sold, transferred, offered for sale, or
delivered by the owner thereof or by his representative for
the owner's account, such sale, transfer, offer for sale or
delivery not being made in the ordinary course of repeated
56 and successive transactions of like character by such owner
57 or on his account by such representative;
58 (i) Sales of tangible personal property and services
59 rendered for use or consumption in connection with the
60 business of selling tangible personal property or dispensing
61 a service subject to tax under this article or which would be
62 subject to tax under this article but for the exemption for
63 food provided in section eleven of this article and sales of
64 tangible personal property and services rendered for use or
65 consumption in connection with the commercial
66 production of an agricultural product the ultimate sale of
67 which will be subject to the tax imposed by this article or
68 which would have been subject to tax under this article but
69 for the exemption for food provided in section eleven of this
70 article: Provided, That sales of tangible personal property
71 and services to be used or consumed in the construction of
72 or permanent improvement to real property and sales of
73 gasoline and special fuel shall not be exempt: Provided,
74 however, That materials and services whereby a tax has
75 been paid by a contractor may be deducted when their
76 services and tangible personal property are used or
77 consumed in the construction of or permanent
78 improvements to real property of retailers or commercial
79 producers of agricultural products: Provided further, That
80 on and after the first day of July, one thousand nine
81 hundred eighty-seven, the exemption provided in this
82 subsection shall apply only to sales of tangible personal
83 property or service used or consumed in connection with the
84 commercial production of an agriculture product or the
85 business of dispensing a service subject to the tax under this
86 article or which would be subject to tax under this article
87 but for the exemption for food in section eleven of this
88 article;
89 (j) Sales of tangible personal property for the purpose of
90 resale in the form of tangible personal property: Provided,
91 That sales of gasoline and special fuel by distributors and
92 importers shall be taxable except when the sale is to
93 another distributor for resale;
94 (k) Sales of property or services to nationally chartered
95 fraternal or social organizations for the sole purpose of free
96 distribution in public welfare or relief work: Provided,
97 That sales of gasoline and special fuel shall be taxable;
98 (l) Sales and services, fire fighting or station house
equipment, including construction and automotive, made
to any volunteer fire department organized and
incorporated under the laws of the state of West Virginia:
Provided, That sales of gasoline and special fuel shall be
taxable;
(m) Sales of newspapers when delivered to consumers
by route carriers;
(n) Sales of drugs dispensed upon prescription and sales
of insulin to consumers for medical purposes;
(o) Sales of radio and television broadcasting time, pre-
printed advertising circulars, and newspaper and outdoor
advertising space for the advertisement of goods or
services;
(p) Sales and services performed by day care centers;
(q) Casual and occasional sales of property or services
not conducted in a repeated manner or in the ordinary
course of repetitive and successive transactions of like
character by corporations or organizations qualified under
section 501(c)(3) of the Internal Revenue Code of 1986, as
amended, or under section 501(c)(4) of the Internal Revenue
Code of 1986, as amended;
r) Sales of property or services to a school which has
approval from the West Virginia board of regents to award
degrees, which has its principal campus in this state, and
which is exempt from federal and state income taxes under
section 501(c)(3) of the Internal Revenue Code of 1986, as
amended: Provided, That sales of gasoline and special fuel
shall be taxable;
s) Sales of mobile homes to be utilized by purchasers as
their principal year-round residence and dwelling:
Provided, That these mobile homes shall be subject to tax at
the three percent rate;
t) Sales of lottery tickets and materials by licensed
lottery sales agents and lottery retailers authorized by the
state lottery commission, under the provisions of article
twenty-two, chapter twenty-nine of this code;
u) Leases of motor vehicles titled pursuant to the
provisions of article three, chapter seventeen-a of this code
to lessees for a period of thirty or more consecutive days.
This exemption shall apply to leases executed on or after the
first day of July, one thousand nine hundred eighty-seven,
and to payments under long-term leases executed before
such date, for months thereof beginning on or after such
date;
Notwithstanding any provisions in this section to the contrary, sales of property and services to persons subject to tax under articles thirteen, thirteen-a or thirteen-b of this chapter: Provided, That the exemption herein granted shall apply only to property or services used or consumed in activities gross receipts from which are subject to tax under such articles and shall not apply to purchases of gasoline or special fuel;

Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass on the same to the consumer, but to make application and receive refund of such tax from the tax commissioner, pursuant to rules and regulations which shall be promulgated by the tax commissioner; and notwithstanding the provisions of section eighteen of this article or any other provisions of such article to the contrary;

Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in United States Code, 2011, et seq., as amended;

Sales of tickets for activities sponsored by elementary and secondary schools located within this state; and

Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) “electric data processing services” means (1) the processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging, or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment.

Method for claiming exemptions, refunds of tax, credit against other taxes.

Any person having a right or claim to any exemption...
set forth in section nine of this article except those
exemptions set forth in subsections (a), (b), (c), (d), (h), (j),
(m), (n), (p), (r), (s), (t), (u), (x) and (y) of said section nine or
the exemption of sales of property or services to churches
under subsection (e) of said section nine shall pay to the
vendor the tax imposed by this article and may exercise or
assert such exemption only in accordance with subsection
(b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this
article and who may lawfully claim exemption from the tax
under a subsection of section nine of this article not
enumerated in subsection (a) of this section may exercise or
assert such claim by filing a claim for refund of consumers
sales and service tax overpayments on such form and in
such manner as the tax commissioner may require and in
accordance with the requirements of this section. The tax
commissioner shall cause a refund to be made within thirty
days of receipt of a lawful and accurate claim.

(c) In lieu of filing a claim for refund of consumers sales
and service tax overpayments, the taxpayer may, at his
option, file a claim for credit on such form and in such
manner as the tax commissioner may require and credit the
amount of consumers sales and service tax overpayments
against certain payments of tax due in accordance with the
requirements of this section as follows:

(1) If the taxpayer is subject to the tax imposed under
article thirteen of this chapter, the taxpayer may credit the
amount of consumers sales and service tax overpayments
against the taxpayer’s quarterly or monthly remittance of
the tax imposed under said article thirteen otherwise due;
or

(2) If the taxpayer is subject to the tax imposed under
article twelve-a of this chapter, the taxpayer may credit the
amount of consumers sales and service tax overpayments
remaining after application of part (1) of this subsection
against the taxpayer’s annual or semiannual remittance of
the tax imposed under said article twelve-a otherwise due;
or

(3) If the taxpayer is subject to the tax imposed under
article thirteen-a of this chapter, the taxpayer may credit
the amount of consumers sales and service tax
overpayments remaining after application of parts (1) and
(2) of this subsection against the taxpayer’s quarterly or
(4) If the taxpayer is subject to the tax imposed under article thirteen-a of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2) and (3) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-a otherwise due; or

(5) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3) and (4) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or

(6) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(8) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsections (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as
the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents, affidavits, sales slips or invoices of a taxpayer or any other person and ascertaining the amount of taxes paid or due under this article or any report, form, document or affidavit required under this article, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records, papers, documents, affidavits, sales slips or invoices requested by the commissioner, the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction over the party and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

(e) All claims for refund of consumers sales and service tax overpayments under subsection (b) of this section shall be filed within the time limitation for filing claims for refund set forth at section fourteen, article ten of this chapter. Any claim for such refund or claim of entitlement to such refund made or asserted after the said time limitation shall be null and void, and if the consumers sales and service tax overpayment has not otherwise been credited against tax remittances in accordance with this section, the said claims shall be forfeited.

(f) Any credit of consumers sales and service tax overpayments against taxes under subsection (c) of this section shall be taken within one year after the payment of the said consumers sales and service tax by the consumer to the vendor. Any such credit or claim of entitlement to such credit made or asserted more than one year after the payment of such tax by the consumer to the vendor shall be
null and void, and such consumers sales and service tax
overpayments shall be forfeited unless refunded under
subsection (b) of this section.
(g) Any assignment of the right or entitlement to a
refund or credit arising under this section shall be subject to
strict proof, and any assignee claiming a right or
entitlement to an assigned refund or credit shall submit an
affidavit in such form as the tax commissioner shall
prescribe signed by the assignor acknowledging the
assignment. The assignee shall attest to the assignment and
the terms thereof on his signed application filed under
subsection (d) of this section for refund or credit, and will be
subject to the penalties provided under West Virginia law
for perjury for any falsehood set forth therein and will be
subject to the penalties set forth in article nine of this
chapter for any violation thereof. Except as provided in this
subsection (g), no payment of a refund arising under this
section shall be made to any person other than the taxpayer
making the original overpayment of consumers sales and
service tax.
(h) No refund shall be due and no credit shall be allowed
under this section unless the taxpayer or assignee shall have
filed a claim for refund or a claim for credit, as appropriate,
with the tax commissioner in accordance with this section.
(i) Any claim for a refund of consumers sales and service
tax overpayments or for a tax credit for consumers sales and
service tax overpayments which is not timely filed or not
filed in proper form or in accordance with the requirements
of this section shall not be construed to constitute a moral
obligation of the state of West Virginia for payment. No
overpayment of consumers sales and service tax made
under this section shall be subject to subsection (d), section
seventeen, article ten of this chapter or paragraph (e)(1),
section seventeen, article ten of this chapter.
(j) The provisions of this section become effective after
the thirtieth day of June, one thousand nine hundred
eighty-seven.
Persons having a right to exemption set forth in
subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u),
(x) and (y) shall, in lieu of paying the tax imposed by this
article, execute a certificate of exemption in such form as
the tax commissioner may require, and such executed
exemption certificate shall be delivered to the vendor in
such manner as the tax commissioner may require.

§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article,
the tax commissioner may, in his discretion, authorize a
person (as defined in section two) that is a user, consumer,
distributor or lessee to which sales or leases of tangible
personal property are made or services provided to pay any
tax levied by this article or article fifteen-a of this chapter
directly to the tax commissioner and waive the collection of
the tax by that person’s vendor. No such authority shall be
granted or exercised except upon application to the tax
commissioner and after issuance by the tax commissioner of
a direct pay permit for purchases made from the vendor or
vendors specified therein. If a direct pay permit is issued,
then payment of the tax imposed by this article or article
fifteen-a of this chapter on all sales and leases of tangible
personal property and sales of taxable services from
designated vendors shall be made directly to the tax
commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every
permit holder shall make and file with the tax
commissioner a return for the preceding month in the form
prescribed by the tax commissioner showing the total value
of the tangible personal property so used, the amount of
taxable services purchased, the amount of tax due from the
permit holder, which amount shall be paid to the tax
commissioner with such return, and such other information
as the tax commissioner deems necessary. The tax
commissioner, upon written request by the permit holder,
may grant a reasonable extension of time for the making
and filing of returns and paying the tax. Interest on such tax
shall be chargeable on every such extended payment at the
rate determined in accordance with section seventeen,
article ten of this chapter.

(c) A permit issued pursuant to this section shall
continue to be valid until expiration of the business’s
registration year under article twelve of this chapter. This
permit shall automatically be renewed when the business’s
business registration certificate is issued for the next
succeeding fiscal year, unless the permit is surrendered by
the holder or canceled for cause by the tax commissioner.

d Persons who hold a direct payment permit which has
not been canceled shall not be required to pay the tax to the
vendor as otherwise provided in this article or article
fifteen-a of this chapter. Such persons shall notify each
vendor from whom tangible personal property is purchased
or leased or from whom services are purchased of their
direct payment permit number and that the tax is being
paid directly to the tax commissioner. Upon receipt of such
notice, such vendor shall be absolved from all duties and
liabilities imposed by this chapter for the collection and
remittance of the tax with respect to sales, distributions,
leases, or storage of tangible personal property and sales of
services to such permit holder. Vendors who make sales
upon which the tax is not collected by reason of the
provisions of this section shall maintain records in such
manner that the amount involved and identity of each such
purchaser may be ascertained.

e Upon the expiration, cancellation or surrender of a
direct payment permit, the provisions of this chapter,
without regard to this section, shall thereafter apply to the
person who previously held such permit, and such person
shall promptly so notify in writing vendors from whom
purchases, leases and storage of tangible personal property
are made of such cancellation or surrender. Upon receipt of
such notice, the vendor shall be subject to the provisions of
this chapter, without regard to this section, with respect to
all sales, distributions, leases or storage of tangible
personal property, thereafter made to or for such person.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; rate; inclusion of services as
taxable on and after the first day of July, one
thousand nine hundred eighty-seven.

(a) An excise tax is hereby levied and imposed on the use
in this state of tangible personal property or taxable
services, to be collected and paid as hereinafter provided, at
the rate of five percent of the purchase price of such
property or taxable services. "Taxable services," for the
purposes of this article, means services of the nature that
are subject to the tax imposed by article fifteen of this
chapter. In this article, wherever the words "tangible
personal property” or “property” appear, the same shall include the words “or taxable services,” where the context so requires.

(b) Such tax is hereby imposed upon every person using tangible personal property or taxable services within this state. That person’s liability is not extinguished until such tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the tax commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(c) Purchases of tangible personal property or taxable services made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state, shall not be subject to use tax when sold, if such industrial materials and equipment would not be subject to use taxes if such were sold outside of the state for use in West Virginia.

(d) This article shall not apply to purchases made by counties or municipal corporations.

(e) The provisions of this section, as amended, shall apply on and after the first day of July, one thousand nine hundred eighty-seven.


(a) The use in this state of the following tangible personal property and services is hereby specifically exempted from the tax imposed by this article to the extent specified:

(1) All articles of tangible personal property brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable.

(2) Tangible personal property or services, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the code
of West Virginia, one thousand nine hundred thirty-one, as amended, and the property or services are being used for the purpose for which it was exempted.

(3) Tangible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission, communication or in the production of natural resources in this state: Provided, That purchases of gasoline or special fuel from distributors or importers shall be taxable: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the full or partial exemption as provided in this subsection and to persons engaged in the businesses specified herein or to the other businesses or organizations as specified in section nine, article fifteen of this chapter, and in respect of tangible personal property or services, provided for in such latter section, shall be the same, and shall not apply to purchases of gasoline or special fuel.

(4) Tangible personal property or services, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and upon which the tax imposed by said article fifteen has been paid.

(5) Tangible personal property or services, the sale of which in this state is not subject to the West Virginia consumers sales tax.

(6) Mobile homes utilized by the owners thereof as their principal year-round residence and dwelling: Provided, That use of these mobile homes shall be subject to tax at the three percent rate.

(b) The provisions of this section, as amended, shall apply on and after the first day of July, one thousand nine hundred eighty-seven.

§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.

(a) Any person having a right or claim to an exemption from the tax imposed by this article by reason of any exemption set forth in section nine, article fifteen of this
chapter except those exemptions set forth in subsections 
(a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u), (x) and (y) of 
said section nine shall pay to the vendor the tax imposed by 
this article and may exercise or assert such exemption only 
in accordance with subsection (b) or subsection (c) of this 
section.

(b) Any person who has paid the tax imposed by this 
article and who may lawfully claim under section three of 
this article any exemption set forth under a subsection of 
section nine of article fifteen not enumerated in subsection 
(a) of this section may exercise or assert such claim by filing 
a claim for refund of use tax overpayments on such form 
and in such manner as the tax commissioner may require 
and in accordance with the requirements of this section.

(c) In lieu of filing a claim for refund of use tax 
overpayments, the taxpayer may, at his option, file a claim 
for credit on such form and in such manner as the tax 
commissioner may require and credit the amount of use tax 
overpayments against certain payments of tax due in 
accordance with the requirements of this section as follows:

(1) If the taxpayer is subject to the tax imposed under 
article thirteen of this chapter, the taxpayer may credit the 
amount of use tax overpayments against the taxpayer's 
quarterly or monthly remittance of the tax imposed under 
said article thirteen otherwise due; or

(2) If the taxpayer is subject to the tax imposed under 
article twelve-a of this chapter, the taxpayer may credit the 
amount of use tax overpayments remaining after 
application of part (1) of this subsection against the 
taxpayer's annual or semiannual remittance of the tax 
imposed under said article twelve-a otherwise due; or

(3) If the taxpayer is subject to the tax imposed under 
article thirteen-a of this chapter, the taxpayer may credit 
the amount of use tax overpayments remaining after 
application of parts (1) and (2) of this subsection against the 
taxpayer's quarterly or monthly remittance of the tax 
imposed under said article thirteen-a otherwise due; or

(4) If the taxpayer is subject to the tax imposed under 
article thirteen-b of this chapter, the taxpayer may credit 
the amount of use tax overpayments remaining after 
application of parts (1), (2) and (3) of this subsection against 
the taxpayer's quarterly or monthly remittance of the tax 
imposed under said article thirteen-b otherwise due; or
(5) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3) and (4) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or

(6) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(8) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsections (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article or article fifteen of this chapter has been paid.

In addition to the powers of the tax commissioner set
forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents, affidavits, sales slips or invoices of a taxpayer or any other person and ascertaining the amount of taxes paid or due under this article or article fifteen of this chapter or any report, form, document or affidavit required under this article or article fifteen of this chapter, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records, papers, documents, affidavits, sales slips or invoices requested by the commissioner, the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction of the party, and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

(e) All claims for refund of use tax overpayments under subsection (b) of this section shall be filed within the time limitation for filing claims for refund set forth at section fourteen, article ten of this chapter. Any claim for such refund or claim of entitlement to such refund made or asserted after the said time limitation shall be null and void, and if the use tax overpayment has not otherwise been credited against tax remittances in accordance with this section, the said claims shall be forfeited.

(f) Any credit of use tax overpayments against taxes under subsection (c) of this section shall be taken within one year after the payment of the tax by the taxpayer to the vendor. Any such credit or claim of entitlement to such credit made or asserted more than one year after the payment of such tax by the taxpayer to the vendor shall be null and void, and such tax overpayments shall be forfeited.

(g) Any assignment of the right or entitlement to a refund or credit arising under this section shall be subject to strict proof, and any assignee claiming a right or entitlement to an assigned refund or credit shall submit an affidavit in such form as the tax commissioner shall prescribe signed by the assignor acknowledging the assignment. The assignee shall attest to the assignment and the terms thereof of his signed application filed under subsection (e) of this section for refund or credit, and will be subject to the penalties provided under West Virginia law.
for perjury for any falsehood set forth therein and will be subject to the penalties set forth in article nine of this chapter for any violation thereof. Except as provided in this subsection (h), no payment of a refund arising under this section shall be made to any person other than the taxpayer making the original overpayment of consumers sales and service tax.

(h) No refund shall be due and no credit shall be allowed unless the taxpayer or assignee shall have filed a claim for refund or a claim for credit, as appropriate, with the tax commissioner in accordance with this section.

(i) Any claim for a refund of use tax overpayments or a tax credit for use tax overpayments which is not timely filed or not filed in proper form or in accordance with the requirements of this section shall not be construed to constitute a moral obligation of the state of West Virginia for payment. No overpayment of use tax made under this section shall be subject to subsection (d), section seventeen, article ten of this chapter, or paragraph (e)(1), section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after the thirtieth day of June, one thousand nine hundred eighty-seven.

§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

Persons having a right or claim under section three of this article, to any exemption set forth in subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u), (x) and (y) of section nine of article fifteen of this chapter shall, in lieu of paying the tax imposed by this article, execute a certificate of exemption in such form as the tax commissioner may require, and such executed exemption certificate shall be delivered to the vendor in such manner as the tax commissioner may require.

§11-5A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, in his discretion, authorize a person (as defined in section two of article fifteen) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this
chapter directly to the tax commissioner and waive the
collection of the tax by that person’s vendor. No such
authority shall be granted or exercised except upon
application to the tax commissioner and after issuance by
the tax commissioner of a direct pay permit for purchases
made from the vendor or vendors specified therein. If a
direct pay permit is issued, then payment of the tax imposed
by this article or article fifteen of this chapter on all sales
and leases of tangible personal property and sales of
taxable services from designated vendors shall be made
directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every
permit holder shall make and file with the tax
commissioner a return for the preceding month in the form
prescribed by the tax commissioner showing the total value
of the tangible personal property so used, the amount of
taxable services purchased, the amount of tax due from the
permit holder, which amount shall be paid to the tax
commissioner with such return, and such other information
as the tax commissioner deems necessary. The tax
commissioner, upon written request by the permit holder,
may grant a reasonable extension of time for the making
and filing of returns and paying the tax. Interest on such tax
shall be chargeable on every such extended payment at the
rate determined in accordance with section seventeen,
article ten of this chapter.

(c) A permit issued pursuant to this section shall
continue to be valid until expiration of the business’s
registration year under article twelve of this chapter. This
permit shall automatically be renewed when the business’s
business registration certificate is issued for the next
succeeding fiscal year, unless the permit is surrendered by
the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has
not been canceled shall not be required to pay the tax to the
vendor as otherwise provided in this article or article fifteen
of this chapter. Such persons shall notify each vendor from
whom tangible personal property is purchased or leased or
from whom services are purchased of their direct payment
permit number and that the tax is being paid directly to the
tax commissioner. Upon receipt of such notice, such vendor
shall be absolved from all duties and liabilities imposed by
this chapter for the collection and remittance of the tax
with respect to sales, distributions, leases or storage of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing vendors from whom purchases, leases and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases, or storage of tangible personal property, thereafter made to or for such person.

§11-15A-18. Seller must show sale not at retail; presumption.

The burden of proving that a sale was not taxable shall be upon the seller, unless, for sales subject to section three-c of this article, he, in good faith, takes from the purchaser a certificate signed by and bearing the address of the purchaser setting forth the reason for exemption of the sale from imposition of the tax. To prevent evasion it shall be presumed that all proceeds are subject to the tax until the contrary is clearly established. This certificate shall be substantially in the form prescribed by the tax commissioner.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax — Taxable periods beginning on or after January 1, 1987.

(a) Rate of tax on individuals filing joint returns or individual returns, estates or trusts. — The tax imposed by section three of this article on the West Virginia taxable income shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>If the West Virginia taxable income is:</th>
<th>The tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $10,000</td>
<td>3% of the taxable income</td>
</tr>
</tbody>
</table>
§11-21-4f. Effect of rate changes during taxable year.

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

(b) For purposes of subsection (a):

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

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


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 income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate 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-seven, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred eighty-six, or thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred eighty-seven, shall be given effect.

§11-21-11. West Virginia taxable income of resident individual.

(a) General. — The West Virginia taxable income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia personal exemptions, as determined under this part.

(b) Husband and wife. — (1) If the federal taxable income of husband or wife is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form. Provided, That the election allowed in subparagraph (B) shall not be available for a husband and wife for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

(c) Effective date. — This section, as amended, shall apply to all taxable years after the thirty-first day of December, one thousand nine hundred eighty-six.
§11-21-12. West Virginia adjusted gross income of resident individual.

(a) **General.** — The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) **Modifications increasing federal adjusted gross income.** — There shall be added to federal adjusted gross income unless already included therein the following items, except that modifications (5), (6) and (7) shall be required only with respect to tax periods ending on or after the first day of January, one thousand nine hundred eighty-two:

1. Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;
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 adjusted gross income and not credited against federal income tax: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;
4. Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;
5. Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;
6. The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year: Provided, That this modification shall not be made for taxable years beginning after the
(7) 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 adjusted gross 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 modification; five-year property — ten percent; ten-year property — fifteen percent; fifteen-year public utility property — twenty-five percent; and fifteen-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: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, including federal interest dividends paid to shareholders of a regulated investment company, under section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, 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: Provided, however, That if such gain is
considered a long-term capital gain for federal income tax
purposes, the modification shall be limited to forty percent
of such portion of the gain: Provided further, That this
modification shall not be made for taxable years beginning
after the thirty-first day of December, one thousand nine
hundred eighty-six;
(4) 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;
(5) Annuities, retirement allowances, returns of
contributions and any other benefit received under the
public employees retirement system, the department of
public safety death, disability and retirement fund, the
state teachers retirement system and all forms of military
retirement, including regular armed forces, reserves and
national guard, including any survivorship annuities
derived therefrom, to the extent includible in gross income
for federal income tax purposes: Provided, That
notwithstanding any provisions in this code to the contrary
this modification shall be limited to the first two thousand
dollars of benefits received under the public employees
retirement system, the state teachers retirement system and
all forms of military retirement including regular armed
forces, reserves and national guard for taxable years
beginning after the thirty-first day of December, one
thousand nine hundred eighty-six;
(6) Retirement income received in the form of pensions
and annuities after the thirty-first day of December, one
thousand nine hundred seventy-nine, under any police or
firemen's retirement system, including any survivorship
annuities derived therefrom, to the extent includible in
gross income for federal income tax purposes;
(7) Federal adjusted gross income in the amount of six
thousand dollars received from any source after the thirty-
first day of December, one thousand nine hundred eighty-
six, by any person who has attained the age of sixty-five on
or before the last day of the taxable year, or by any person
certified by proper authority as permanently and totally
disabled, regardless of age, on or before the last day of the
taxable year, to the extent includible in federal adjusted
provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of six thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions;

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars: Provided, however, That this modification shall not
be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;
(10) Gross income to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code for federal income tax purposes: Provided,
That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;
(11) The amount of any lottery prize awarded by the West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes; and
(12) Any other income which this state is prohibited from taxing under the laws of the United States.

Modification for West Virginia fiduciary adjustment.
— There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

Partners.
— The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen of this article.

Husband and wife.
— If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

§11-21-13. West Virginia deduction of resident individual.

The West Virginia deduction of a resident individual shall be his West Virginia standard deduction unless he elects to deduct his West Virginia itemized deduction under the conditions set forth in section fifteen: Provided, That no West Virginia deduction shall be allowed for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-14. West Virginia standard deduction of a resident individual.

(a) General. — The West Virginia standard deduction of
(a) General. — If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Husband and wife. — (1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose West Virginia taxable incomes are determined separately, may be taken by either or divided between them in such proportions as they may elect.

(c) Modifications reducing federal itemized deductions. — The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:
(1) Income taxes imposed by this state or any other taxing jurisdiction; and
(2) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article.
(d) **Partners.** — The amounts of modifications under subsection (c) required to be made by a partner with respect to items of deduction of a partnership shall be determined under section seventeen.
(e) **Expiration.** — The West Virginia itemized deduction provided in this section shall not apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-16. **West Virginia personal exemptions of resident individual.**

(a) **General.** — For any tax imposed under the provisions of this article with respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, a resident individual shall be allowed a West Virginia exemption of six hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes. With respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-three, and prior to the first day of January, one thousand nine hundred eighty-four, said exemption shall be seven hundred dollars; with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-four, said exemption shall be eight hundred dollars; and with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-seven, said exemption shall be two thousand dollars.
(b) **Husband and wife.** — If the West Virginia income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled, with respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, to a West Virginia exemption of six hundred dollars for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns. With respect to any taxable
28 year beginning on or after the first day of January, one
29 thousand nine hundred eighty-three, and prior to the first
30 day of January, one thousand nine hundred eighty-four,
31 said exemption shall be seven hundred dollars; with respect
32 to any taxable year beginning on or after the first day of
33 January, one thousand nine hundred eighty-four, said
34 exemption shall be eight hundred dollars; and with respect
35 to any taxable year beginning on or after the first day of
36 January, one thousand nine hundred eighty-seven, said
37 exemption shall be two thousand dollars.
38 (c) **Surviving spouse.** — For taxable years beginning
39 after the thirty-first day of December, one thousand nine
40 hundred eighty-six, a surviving spouse shall be allowed one
41 additional exemption for the two taxable years beginning
42 after the year of death of the deceased spouse.

§11-21-31. **West Virginia taxable income of nonresident individual.**

1 (a) **General.** — The West Virginia taxable income of a
2 nonresident individual shall be his West Virginia adjusted
3 gross income less his West Virginia personal exemptions, as
4 determined under this part.
5 (b) **Husband and wife.** — (1) If the federal taxable
6 income of husband or wife, both of whom are nonresidents,
7 is determined on a separate federal return, their West
8 Virginia taxable incomes shall be separately determined.
9 (2) If the federal taxable income of husband and wife,
10 both of whom are nonresidents, is determined on a joint
11 federal return, or if neither files a federal return:
12 (A) Their tax shall be determined on their joint West
13 Virginia taxable income, or
14 (B) Separate taxes may be determined on their separate
15 West Virginia taxable incomes if they so elect and if they
16 comply with the requirements of the tax commissioner in
17 setting forth information on a single form.
18 (3) If either husband or wife is a resident and the other is
19 a nonresident, separate taxes shall be determined on their
20 separate West Virginia taxable incomes on such single or
21 separate forms as may be required by the tax commissioner,
22 unless both elect to determine their joint West Virginia
23 taxable income as if both were residents.
24 (c) **Effective date.** — This section, as amended, shall
25 apply to all taxable years beginning after the thirty-first
26 day of December, one thousand nine hundred eighty-six.
§11-21-32. West Virginia adjusted gross income of a nonresident individual.

(a) General. — The West Virginia adjusted gross income of a nonresident individual shall be the sum of the following:

1 (1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with West Virginia sources, including:

   (A) His distributive share of partnership income, gain, loss and deduction, determined under section thirty-seven; and

   (B) His share of estate or trust income, gain, loss and deduction, determined under section thirty-nine; and

2 (2) The portion of the modifications described in subsections (b) and (c) of section twelve which relate to income derived from West Virginia sources (including any modifications attributable to him as a partner).

(b) Income and deductions from West Virginia sources. — (1) Items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be those items attributable to:

   (A) The ownership of any interest in real or tangible personal property in this state; or

   (B) A business, trade, profession or occupation carried on in this state.

2 (2) Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from West Virginia sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state.

3 (3) Deductions with respect to capital losses, net long-term capital gains and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with West Virginia sources, under regulations of the tax commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(c) Income and deductions partly from West Virginia sources. — If a business, trade, profession or occupation is
carried on partly within and partly without this state, as
determined under regulations of the tax commissioner, the
items of income, gain, loss and deduction derived from or
connected with West Virginia sources shall be determined
by apportionment and allocation under such regulation.
(d) Purchase and sale for own account. — A
nonresident, other than a dealer holding property primarily
for sale to customers in the ordinary course of his trade or
business, shall not be deemed to carry on a business, trade,
profession or occupation in this state solely by reason of the
purchase and sale of property for his own account.
(c) Husband and wife. — If husband and wife determine
their federal income tax on a joint return but determine
their West Virginia income taxes separately, they shall
determine their West Virginia adjusted gross incomes
separately as if their federal adjusted gross incomes had
been determined separately.
§11-21-33. West Virginia deduction of a nonresident
individual.
1 The West Virginia deduction of a nonresident individual
shall be his West Virginia standard deduction unless he
elects to deduct his West Virginia itemized deduction under
the conditions set forth in section thirty-five: Provided,
That no West Virginia deduction shall be allowed for
taxable years beginning after the thirty-first day of
December, one thousand nine hundred eighty-six.
§11-21-34. West Virginia standard deduction of a nonresident
individual.
1 The West Virginia standard deduction of a nonresident
individual shall be ten per centum of his West Virginia
adjusted gross income, or one thousand dollars, whichever
is less. The West Virginia standard deduction of a
nonresident husband or wife shall be determined under the
rules of section fourteen: Provided, That no West Virginia
standard deduction shall be allowed for taxable years
beginning after the thirty-first day of December, one
thousand nine hundred eighty-six.
§11-21-35. West Virginia itemized deduction of a nonresident
individual.
1 (a) General. — If federal taxable income of a
nongresident individual is determined by itemizing
deductions from his federal adjusted gross income, he may
elect to deduct his West Virginia itemized deduction in lieu
of his West Virginia standard deduction. The West Virginia
itemized deduction of a nonresident individual shall be the
same as the total amount of the following of his deductions
from federal adjusted gross income, as provided in the laws
of the United States for the taxable year (including any
items attributable to him as a partner):
(1) Deductions for contributions or gifts to this state or
to any political subdivision thereof, or to any corporation,
trust, community chest, fund, foundation or other entity
organized or operated under the laws of this state;
(2) Deductions for alimony or separate maintenance
payments includible in the West Virginia adjusted gross
income of the recipient;
(3) Deductions for losses of real or tangible personal
property having an actual situs in this state, arising from
fire, storm, shipwreck or other casualty, or from theft;
(4) Deductions, with respect to real or tangible personal
property having an actual situs in this state, for losses (other
than capital losses) incurred in any transaction entered into
for profit but not connected with the taxpayer's trade or
business; and
(5) Deductions determined under regulations of the tax
commissioner to be connected with his West Virginia
adjusted gross income, except deductions for income taxes
imposed by this state or any other taxing jurisdiction.
(b) Husband and wife. — (1) A husband and wife, both of
whom are required to file returns under this article, shall be
allowed West Virginia itemized deductions only if both
elect to take West Virginia itemized deductions.
(2) The total of the West Virginia itemized deductions of
a husband and wife whose federal taxable income is
determined on a joint return but whose West Virginia
taxable incomes are determined separately may be taken by
either or divided between them as they may elect.
(c) Expiration. — The West Virginia itemized deduction
provided in this section shall not apply to taxable years
beginning after the thirty-first day of December, one
thousand nine hundred eighty-six.
§11-21-43. Credit for consumers sales and service tax and use tax paid.

1 The tax imposed by this article shall be subject to the credit set forth at section nine-b, article fifteen of this chapter and the credit set forth at section three-b, article fifteen-a of this chapter.

§11-21-51. Returns and liabilities.

1 (a) General. — On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

1 (1) Every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve in excess of the sum of his West Virginia personal exemptions;

1 (2) Every resident estate or trust required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year, determined under section eighteen;

1 (3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two, in excess of the sum of his West Virginia personal exemptions; and

1 (4) Every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, in excess of its West Virginia exemption.

1 (b) Husband and wife. — (1) If the federal income tax liability of husband or wife is determined on a separate federal return, their West Virginia income tax liabilities and returns shall be separate.

1 (2) If the federal income tax liabilities of husband and wife other than a husband and wife described in paragraph (3) of this subsection (b) are determined on a joint federal return, or if neither files a federal return:

1 (A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several, or

1 (B) They may elect to file separate West Virginia income tax returns on a single form if they comply with the
requirements of the tax commissioner in setting forth
information, and in such event their tax liabilities shall be
separate: Provided, That the election allowed in this
subparagraph (B) shall not be available for a husband and
wife for taxable years beginning after the thirty-first day of
December, one thousand nine hundred eighty-six.

(3) If either husband or wife is a resident and the other is
a nonresident, they shall file separate West Virginia income
tax returns on such single or separate forms as may be
required by the tax commissioner, and in such event their
tax liabilities shall be separate.

(c) **Decedents.** — The return for any deceased individual
shall be made and filed by his executor, administrator or
other person charged with his property.

(d) **Individuals under a disability.** — The return for an
individual who is unable to make a return by reason of
minority or other disability shall be made and filed by his
guardian, committee, fiduciary or other person charged
with the care of his person or property (other than a receiver
in possession of only a part of his property), or by his duly
authorized agent.

(e) **Estates and trusts.** — The return for an estate or trust
shall be made and filed by the fiduciary.

(f) **Joint fiduciaries.** — If two or more fiduciaries are
acting jointly, the return may be made by any one of them.

(g) **Tax a debt.** — Any tax under this article, and any
increase, interest or penalty thereon, shall, from the time it
is due and payable, be a personal debt of the person liable to
pay the same, to the state of West Virginia.

(h) **Cross reference.** — For provisions as to information
returns by partnership, employers and other persons, see
section fifty-eight.

**§11-21-74. Employer's return and payment of withheld taxes.**

(a) **General.** — Every employer required to deduct and
withhold tax under this article shall, for each calendar
quarter, on or before the last day of the month following the
close of such calendar quarter, file a withholding return as
prescribed by the tax commissioner and pay over to the tax
commissioner the taxes so required to be deducted and
withheld. Where the aggregate amount so deducted and
withheld by any employer is less than twenty-five dollars in
a calendar quarter and the aggregate for the calendar year
can reasonably be expected to be less than one hundred
dollars, the tax commissioner may by regulation permit an
employer to file an annual return and pay over to the tax
commissioner the taxes deducted and withheld on or before
the last day of the month following the close of such
calendar year. The tax commissioner may, if he believes
such action necessary for the protection of the revenues,
require any employer to make such return and pay to him
the tax deducted and withheld at any time, or from time to
time.

(b) Monthly returns and payments of withheld tax for
April and May, 1971. — Notwithstanding the provisions of
subsection (a), in the case of each of the months of April and
May, one thousand nine hundred seventy-one, every
employer required to deduct and withhold tax under this
article, except any employer with respect to whom the tax
commissioner may have by regulation provided otherwise
in accordance with the provisions of subsection (a), shall,
for the months of April and May, one thousand nine
hundred seventy-one, file a withholding return for each of
such months as prescribed by the tax commissioner and pay
over to the tax commissioner the taxes so required to be
deducted and withheld for each of such months by the
twentieth day of June, one thousand nine hundred seventy-
one.

(c) Monthly returns and payments of withheld tax on
and after June 1, 1971. — Notwithstanding the provisions of
subsection (a), on and after June 1, 1971, every employer
required to deduct and withhold tax under this article shall,
for each of the first eleven months of the calendar year, on or
before the twentieth day of the succeeding month and for
the last calendar month of the year, on or before the last day
of the succeeding month, file a withholding return as
prescribed by the tax commissioner and pay over to the tax
commissioner the taxes so required to be deducted and
withheld, if such withheld taxes aggregate one hundred
dollars or more for such month; except any employer with
respect to whom the tax commissioner may have by
regulation provided otherwise in accordance with the
provisions of subsection (a): Provided, That in accordance
with regulations promulgated by the tax commissioner, a
payment of withheld tax may be subject to the credit set
forth at section nine-b, article fifteen of this chapter and the
credit set forth at section three-b, article fifteen-a of this chapter.

(d) **Deposit in trust for tax commissioner.** — Whenever any employer fails to collect, truthfully account for, pay over the tax or make returns of the tax as required in this section, the tax commissioner may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such tax in such account until payment over to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served by the tax commissioner.

ARTICLE 23. **BUSINESS FRANCHISE TAX.**

§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:

(i) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that 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;

(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.

(ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of 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, apiary, 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 the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(11) Federal Form 1065. — The term “Federal Form 1065” means the annual federal income tax return of a partnership made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a 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 canceled 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.

§11-23-7. **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 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 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.


(a) In general. — Every person subject to the tax
imposed by this article shall make and file an annual return
for the taxable year with the tax commissioner on or before:

(1) The fifteenth day of the third month of the next
succeeding taxable year if the person is a corporation; or

(2) The fifteenth day of the fourth month of the next
succeeding taxable year if the person is a partnership.

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.


(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 section six 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 rateably 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.

§11-23-17. 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: Provided, That on or after the first day of July, one thousand nine hundred eighty-eight, 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 articles thirteen and 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 for the full amount of any tax imposed
pursuant to article eight of this chapter on the capital of the
business, as determined under sections fourteen and
fourteen-a, article three of this chapter.

§11-23-25. Credit for consumers sales and service tax and use
tax paid.
1 The tax imposed by this article shall be subject to the
credit set forth at section nine-b, article fifteen of this
chapter and the credit set forth at section three-b, article
fifteen-a of this chapter.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.
1 For purposes of this article:
2 (1) Business income. — The term “business income”
3 means income arising from transactions and activity in the
4 regular course of the taxpayer’s trade or business and
5 includes income from tangible and intangible property if
6 the acquisition, management and disposition of the
7 property constitute integral parts of the taxpayer’s regular
8 trade or business operations.
9 (2) Commercial domicile. — The term “commercial
domicile” means the principal place from which the trade
or business of the taxpayer is directed or managed.
10 (3) Compensation. — The term “compensation” means
wages, salaries, commission 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 in this state.

(8) Federal Form 1120. — The term “Federal Form
1120” means the annual federal income tax return of any
corporation made pursuant to the United States Internal
Revenue Code of 1986, as amended, or in successor
provisions of the laws of the United States, in respect to the
federal taxable income of a corporation, and filed with the
Federal Internal Revenue Service. In the case of a
corporation that elects to file a federal income tax return as
part of an affiliated group, but files as a separate
corporation under this article, then as to such corporation
Federal Form 1120 means its pro forma Federal Form 1120.

(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 an affiliated 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, one thousand nine hundred thirty-one, as amended.

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

§11-24-6. 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; and
4. 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 thirtieth day of June, one thousand nine hundred eighty-seven.

(c) Adjustments decreasing federal taxable income.

There shall be deducted 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 thirtieth day of June, one thousand nine hundred eighty-seven;

(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 thirtieth day of June, one thousand nine hundred eighty-seven;

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

(6) The full amount of interest expense actually disallowed in determining federal taxable income which
was incurred or continued to purchase or carry obligations
or securities of any state or of any political subdivision
thereof.
(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 monthly beginning and ending account balances during 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)

2. 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 monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of

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

(2) Capital gains.

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

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

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

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

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

(D) Gains pursuant to section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, 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
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 sale, rental, leasing, licensing or other use of tangible personal property, or

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

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

(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) of this section do not fairly represent the taxpayer’s business activities in this state, 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
Enr. S. B. No. 536] 86

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.

§11-24-23. **Credit for consumers sales and service tax and use tax paid.**

The tax imposed by this article shall be subject to the credit set forth at section nine-b, article fifteen of this chapter, and the credit set forth at section three-b, article fifteen-a of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ...............this the ...............day of .................., 1987.

Governor
TO THE HONORABLE SECRETARY OF STATE:

I, DONALD L. KOPP, Clerk of the House of Delegates, and as such Clerk, Keeper of the Rolls of the Legislature of West Virginia, hereby certify that the foregoing bill, S. B. 536, disapproved by the Governor on the 30th day of March, 1987, was subsequently repassed by the Legislature, notwithstanding the objections of the Governor, on the 6th day of April, 1987.

Donald L. Kopp

Clerk of the House of Delegates
and Keeper of the Rolls of the Legislature.