

536

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 536

(By Senators Brockenrich & Lehr)



PASSED March 19, 1987  
In Effect July 1, 1987 Passage



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(BY SENATORS BRACKENRICH AND LOEHR)

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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  
2 state capitol building for the use and benefit of the citizens  
3 of West Virginia. The intent of this legislation is to provide  
4 additional funding for the preservation and maintenance of  
5 the state capitol building, to be primarily used to refurbish  
6 the capitol dome with gold leaf.

7 The financing of this program will be derived from a  
8 voluntary check-off and contribution designation on state  
9 personal income tax return forms of a portion or all of a  
10 taxpayer's refund. The funding provided shall be  
11 supplemental to existing revenues.

**§5A-9-2. Voluntary check-off designation.**

1 (a) Each West Virginia individual income tax return  
2 form shall contain a designation as follows:

3 **West Virginia Gilding the Dome Check-Off Program.**

4 Check ( ) if you wish to designate \$1, \$5, \$10 or more of  
5 your tax refund for this program. If joint return, check ( )  
6 if spouse wishes to designate \$1, \$5, \$10 or more.

7 (b) Each individual taxpayer desiring to contribute to  
8 the voluntary gilding the dome program may designate by

9 placing an "X" in the appropriate box on the state income  
10 tax return form. His contribution shall be credited to said  
11 program.

**§5A-9-3. Contributions credited to special fund.**

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

**§5A-9-4. Use of funds.**

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

**§5A-9-5. Effective date.**

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

**CHAPTER 11. TAXATION.**

**ARTICLE 9. CRIMES AND PENALTIES.**

**§11-9-2. Application of this article.**

1 (a) The provisions of this article shall apply to the  
2 following taxes imposed by chapter eleven: (1) The  
3 inheritance and transfer taxes and estate taxes imposed by  
4 article eleven; (2) the business franchise registration tax  
5 imposed by article twelve; (3) the annual tax on incomes of  
6 certain carriers imposed by article twelve-a; (4) the  
7 business and occupation tax imposed by article thirteen; (5)  
8 the gasoline and special fuels excise tax imposed by article  
9 fourteen; (6) the motor carrier road tax imposed by article  
10 fourteen-a; (7) the consumers sales and service tax imposed  
11 by article fifteen; (8) the use tax imposed by article fifteen-  
12 a; (9) the cigarette tax imposed by article seventeen; (10) the  
13 soft drinks tax imposed by article nineteen; (11) the

14 personal income tax imposed by article twenty-one; and  
15 (12) the corporation net income tax imposed by article  
16 twenty-four.

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

22 (c) Each and every provision of this article shall apply to  
23 the articles of this chapter listed in subsections (a) and (b),  
24 with like effect, as if the provisions of this article were  
25 applicable only to such tax and were set forth in extenso in  
26 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.**

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 13. BUSINESS AND OCCUPATION TAX.**

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

1 (a) Upon any person engaging or continuing within this  
2 state in any public service or utility business, except  
3 railroad, railroad car, express, pipeline, telephone and  
4 telegraph companies, water carriers by steamboat or  
5 steamship and motor carriers, there is likewise hereby  
6 levied and shall be collected taxes on account of the  
7 business engaged in equal to gross income of the business  
8 multiplied by the respective rates as follows:

9 (1) Street and interurban and electric railways, one and  
10 four-tenths percent;

11 (2) Water companies, four and four-tenths percent,  
12 except as to income received by municipally owned water  
13 plants;

14 (3) Electric light and power companies, four percent on  
15 sales and demand charges for domestic purposes and  
16 commercial lighting and four percent on sales and demand  
17 charges for all other purposes and commercial lighting and  
18 four percent on sales and demand charges for all other



19 purposes, except as to income received by municipally  
20 owned plants producing or purchasing electricity and  
21 distributing same: *Provided*, That electric light and power  
22 companies which engage in the supplying of public service  
23 but which do not generate or produce electric power shall  
24 be taxed on the gross income derived therefrom at the rate  
25 of three percent on sales and demand charges for domestic  
26 purposes and commercial lighting and three percent on  
27 sales and demand charges for all other purposes, except as  
28 to income received by municipally owned plants: *Provided*,  
29 *however*, That the sale of electric power under this section  
30 shall be taxed at the rate of two and forty-six hundredths  
31 percent on that portion of the gross proceeds derived from  
32 the sale of electric power to a plant location of a customer  
33 engaged in a manufacturing activity, if the contract  
34 demand at such plant location exceeds two hundred  
35 thousand kilowatts per hour per year, or if the usage of such  
36 plant location exceeds two hundred thousand kilowatts per  
37 hour in a year: *Provided further*, That such two and forty-  
38 six hundredths percent rate will be reduced to a rate of two  
39 and three hundred thirty-seven thousandths percent  
40 through occurrence of the contemplated five percent  
41 reduction of rates on the first day of July, one thousand nine  
42 hundred eighty-five, and with such rate to thereafter, on the  
43 first day of July, one thousand nine hundred eighty-seven,  
44 become two percent: *And provided further*, That the sale of  
45 electric power under this section shall be exempt from the  
46 tax imposed by section two if it is separately metered and  
47 consumed in an electrolytic process for the manufacture of  
48 chlorine in this state, or is separately metered and  
49 consumed in the manufacture of ferroalloy in this state, and  
50 the rate reduction herein provided to the taxpayer shall be  
51 passed on to the manufacturer of the chlorine or ferroalloy.  
52 As used in this section, the term "ferroalloy" means any of  
53 various alloys of iron and one or more other elements used  
54 as a raw material in the production of steel: *And provided*  
55 *further*, That the term does not include the final production  
56 of steel;

57 (4) Natural gas companies, four and twenty-nine  
58 hundredths percent on the gross income: *Provided*, That the  
59 sale of natural gas under this section shall be exempt from  
60 the tax imposed by this section and section two of this  
61 article to the extent that the natural gas is separately

62 metered and is gas from which the purchaser derives  
63 hydrogen and carbon monoxide for use in the manufacture  
64 of chemicals in this state, and the full economic benefit of  
65 the exception herein provided to the taxpayer shall be  
66 passed on to such purchaser of the natural gas: *Provided,*  
67 *however,* That there shall be no exemption for the sale of  
68 any natural gas from which the purchaser derives carbon  
69 monoxide or hydrogen for the purpose of resale;

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

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

74 (b) The measure of this tax shall not include gross  
75 income derived from commerce between this state and  
76 other states of the United States or between this state and  
77 foreign countries. The measure of the tax under this section  
78 shall include only gross income received from the supplying  
79 of public service. The gross income of the taxpayer from any  
80 other activity shall be included in the measure of the tax  
81 imposed upon such other activity by the appropriate section  
82 or sections of this article.

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

1 (1) Upon every person engaging or continuing within  
2 this state in the business of generating or producing electric  
3 power for sale, profit or commercial use, either directly or  
4 through the activity of others, in whole or in part, when the  
5 sale thereof is not subject to tax under section two-d of this  
6 article, the amount of the tax to be equal to the value of the  
7 electric power, as shown by the gross proceeds derived from  
8 the sale thereof by the generator or producer of the same  
9 multiplied by a rate of four percent, except that the rate  
10 shall be two and forty-six hundredths percent on that  
11 portion of the gross proceeds derived from the sale of  
12 electric power to a plant location of a customer engaged in a  
13 manufacturing activity, if the contract demand at such  
14 plant location exceeds two hundred thousand kilowatts per  
15 hour per year, or if the usage at such plant location exceeds  
16 two hundred thousand kilowatts per hour in a year:  
17 *Provided,* That such two and forty-six hundredths percent  
18 rate will be reduced to a rate of two and three hundred  
19 thirty-seven thousandths percent through occurrence of the

20 contemplated five percent reduction of rates on the first day  
21 of July, one thousand nine hundred eighty-five, and with  
22 such rate to thereafter, on the first day of July, one thousand  
23 nine hundred eighty-seven become two percent.

24 (2) The measure of this tax shall be the value of all  
25 electric power generated or produced in this state for sale,  
26 profit or commercial use, regardless of the place of sale or  
27 the fact that transmission may be to points outside this  
28 state: *Provided*, That the gross income received by  
29 municipally owned plants generating or producing  
30 electricity shall not be subject to tax under this article.

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

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

11 (b) Persons who are calendar year taxpayers and who  
12 are not subject to the tax imposed by this article for months  
13 beginning on or after the first day of July, one thousand nine  
14 hundred eighty-seven, and persons who are fiscal year  
15 taxpayers having a fiscal year ending on any date other than  
16 the thirtieth day of June, one thousand nine hundred  
17 eighty-seven, and who are not subject to the tax imposed by  
18 this article for months beginning on or after the first day of  
19 July, one thousand nine hundred eighty-seven, shall file  
20 their annual returns on or before the thirty-first day of July,  
21 one thousand nine hundred eighty-seven, for the short  
22 taxable year which ended the thirtieth day of June, one  
23 thousand nine hundred eighty-seven, and remit the amount  
24 of any taxes shown thereon to be due. Persons required to  
25 file an annual return for a short taxable year may claim a  
26 portion of the annual exemption allowed under section  
27 three of this article, determined in accordance with the  
28 amount of the exemption allowable for each month in the  
29 short taxable year. The five thousand dollar annual  
30 exemption allowed to producers of natural gas shall

31 similarly be calculated and allowed on a monthly basis at  
32 the rate of four hundred sixteen dollars and sixty-six cents  
33 for each month of the short taxable year ending on the  
34 thirtieth day of June, one thousand nine hundred eighty-  
35 seven.

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

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

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

68 (f) Tax liabilities, if any arising for taxable years ending  
69 prior to the first day of July, one thousand nine hundred  
70 eighty-seven, shall be determined, administered, assessed  
71 and collected as if sections two-a, two-b, two-c, two-e,  
72 two-g, two-h, two-i, two-j, two-k and two-l of this article  
73 had not been effectively repealed; and the rights and duties

74 of the taxpayer and the state of West Virginia shall be fully  
75 and completely preserved.

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

**§11-13-31. 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 13A. SEVERANCE TAXES.**

**§11-13A-2. Definitions.**

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) “Coal” means and includes any material composed  
9 predominantly of hydrocarbons in a solid state.

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

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

25 (4) “Extraction of ores or minerals from the ground”  
26 includes extraction by mine owners or operators of ores or  
27 minerals from the waste or residue of prior mining.

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

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

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

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

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

48 (D) If severed natural resources are purchased for the  
49 purpose of processing and resale, the gross value is the  
50 amount received or receivable during the reporting period  
51 reduced by the amount paid or payable to the taxpayer  
52 actually severing the natural resource. If natural resources  
53 are severed outside the state of West Virginia and brought  
54 into the state of West Virginia by the taxpayer for the  
55 purpose of processing and resale, the gross value is the  
56 amount received or receivable during the reporting period  
57 reduced by the fair market value of the natural resources of  
58 similar grade and quality and in the same condition  
59 immediately preceding the processing of the natural  
60 resources in this state.

61 (E) If severed natural resources are purchased for the  
62 purpose of processing and consumption, the gross value is  
63 the fair market value of processed natural resources of  
64 similar grade and quality reduced by the amount paid or  
65 payable to the taxpayer actually severing the natural  
66 resource. If severed natural resources are severed outside  
67 the state of West Virginia and brought into the state of West  
68 Virginia by the taxpayer for the purpose of processing and  
69 consumption, the gross value is the fair market value of  
70 processing natural resources of similar grade and quality

71 reduced by the fair market value of the natural resources of  
72 similar grade and quality and in the same condition  
73 immediately preceding the processing of the natural  
74 resources.

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

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

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

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

88 (8) "Natural resource" means all forms of minerals  
89 including, but not limited to, rock, stone, limestone, coal,  
90 shale, gravel, sand, clay, natural gas, oil and natural gas  
91 liquids which are contained in or on the soils or waters of  
92 this state, and includes standing timber.

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

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

107 (11) "Processed" or "processing" as applied to:

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

110 (B) Limestone or sandstone quarried or mined shall not  
111 include any treatment process or transportation after the  
112 limestone or sandstone is severed from the earth.

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

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

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

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

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

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

150 (18) "Taxpayer" means and includes any individual,  
151 partnership, joint venture, association, corporation,  
152 receiver, trustee, guardian, executor, administrator,  
153 fiduciary or representative of any kind engaged in the  
154 business of severing or processing (or both severing and  
155 processing) natural resources in this state for sale or use. In



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.**

1

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

13 (b) *Tax rates; classifications; effective dates.* —  
14 Beginning on and after the first day of July, one thousand  
15 nine hundred eighty-seven and for each first day of July  
16 thereafter, as specified below, the rates of tax on each  
17 respective classification and for each respective year are as  
18 follows:

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

23 July 1, 1987 — three and eighty-five one hundredths  
24 (3.85) percent;

25 July 1, 1988 — three and eighty-eight one hundredths  
26 (3.88) percent;

27 July 1, 1989 — three and ninety-one one hundredths  
28 (3.91) percent;

29 July 1, 1990 — three and ninety-four one hundredths  
30 (3.94) percent;

31 July 1, 1991 — three and ninety-seven one hundredths  
32 (3.97) percent; and

33 July 1, 1992 — and thereafter — four (4.0) percent.  
34 (2) On limestone or sandstone quarried or mined, on  
35 July 1, 1987 — two and two-tenths (2.2) percent;  
36 July 1, 1988 — two and fifty-six one hundredths (2.56)  
37 percent;  
38 July 1, 1989 — two and ninety-two one hundredths (2.92)  
39 percent;  
40 July 1, 1990 — three and twenty-eight one hundredths  
41 (3.28) percent;  
42 July 1, 1991 — three and sixty-four one hundredths (3.64)  
43 percent; and  
44 July 1, 1992 — and thereafter — four (4.0) percent.  
45 (3) On oil, on  
46 July 1, 1987 — four and thirty-four one hundredths (4.34)  
47 percent;  
48 July 1, 1988 — four and two hundred seventy-two one  
49 thousandths (4.272) percent;  
50 July 1, 1989 — four and two hundred four one  
51 thousandths (4.204) percent;  
52 July 1, 1990 — four and one hundred thirty-six one  
53 thousandths (4.136) percent;  
54 July 1, 1991 — four and sixty-eight one thousandths  
55 (4.068) percent; and  
56 July 1, 1992 — and thereafter — four (4.0) percent.  
57 (4) (a) On natural gas, on  
58 July 1, 1987 — six and five-tenths (6.5) percent;  
59 July 1, 1988 — six (6.0) percent;  
60 July 1, 1989 — five and five tenths (5.5) percent;  
61 July 1, 1990 — five (5.0) percent;  
62 July 1, 1991 — four and five-tenths (4.5) percent; and  
63 July 1, 1992 — and thereafter — four (4.0) percent.  
64 (4) (b) On natural gas produced from new wells drilled  
65 and placed in service on and after July 1, 1987 — four (4.0)  
66 percent.  
67 (5) On sand, gravel or other mineral product not  
68 quarried or mined, on  
69 July 1, 1987 — four and thirty-four one hundredths (4.34)  
70 percent;  
71 July 1, 1988 — four and two hundred seventy-two one  
72 thousandths (4.272) percent;  
73 July 1, 1989 — four and two hundred four one  
74 thousandths (4.204) percent;  
75 July 1, 1990 — four and one hundred thirty-six one  
76 thousandths (4.136) percent;

77 July 1, 1991 — four and sixty-eight one thousandths  
78 (4.068) percent; and

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

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

82 (7) On other natural resources, on

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

85 July 1, 1988 — three and eighty-eight one thousandths  
86 (3.088) percent;

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

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

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

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

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

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

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

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

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

10 (2) *Minerals customarily sold in crude form.* — In the  
11 case of other minerals which are customarily sold in crude  
12 form: Sorting, concentrating, sintering and substantially  
13 equivalent processes to bring them to shipping grade and  
14 form, and loading for shipment.

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

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

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

36 (b) *Treatment processes not considered as mining.* —  
37 Unless such processes are otherwise provided for in  
38 subsection (a), or are necessary or incidental to processes  
39 provided for in subsection (a), the following treatment  
40 processes shall not be considered as “mining”: Electrolytic  
41 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.**

**§11-13B-2. Definitions.**

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

18 “communications pathway” means any conduit, wire,  
19 cable, microwave signal path, radio signal path or other  
20 pathway over which telecommunications can be carried.  
21 The length of the communications pathway of satellite  
22 repeater facilities or other satellite communications  
23 facilities is deemed to be the shortest distance over the  
24 surface of the earth between the point on the earth from  
25 which signals are sent to the satellite and the point on the  
26 earth where such signals are received from the satellite.

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

34 (5) *Gross income*. — The term “gross income” of a  
35 telephone company or communications carrier shall be  
36 defined as all gross income received from the provision of  
37 local exchange or long distance voice or data  
38 communications services but shall not include gross income  
39 from the provision of network access, billing or similar  
40 services provided to end users, other telephone companies,  
41 or communications carriers: *Provided*, That on and after  
42 the first day of July, one thousand nine hundred eighty-  
43 eight, the term “gross income” of a telephone company or  
44 communications carrier shall not include gross income  
45 from the provision of commodities or services which shall  
46 be determined by the public service commission of West  
47 Virginia to be subject to competition. On or before the  
48 thirty-first day of December of each calendar year, the  
49 public service commission of West Virginia shall submit to  
50 the tax commissioner a listing of those commodities or  
51 services which it has determined to be subject to  
52 competition. Such listing shall constitute a conclusive  
53 determination for the purposes of defining “gross income”  
54 within the meaning of this subsection.

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

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

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

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

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

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

**§11-13B-18. 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 15. CONSUMERS SALES TAX.**

**§11-15-2. Definitions.**

1 For the purpose of this article:  
2 (a) “Persons” shall mean any individual, partnership,  
3 association, corporation, municipal corporation, guardian,  
4 trustee, committee, executor or administrator;

- 5 (b) "Tax commissioner" shall mean the state tax  
6 commissioner;
- 7 (c) "Gross proceeds" shall mean the amount received in  
8 money, credits, property or other consideration from sales  
9 and services within this state, without deduction on  
10 account of the cost of property sold, amounts paid for  
11 interest or discounts or other expenses whatsoever. Losses  
12 shall not be deducted, but any credit or refund made for  
13 goods returned may be deducted;
- 14 (d) "Sale," "sales" or "selling" shall include any  
15 transfer of the possession or ownership of tangible personal  
16 property for a consideration, including a lease or rental,  
17 when the transfer or delivery is made in the ordinary course  
18 of the transferor's business and is made to the transferee or  
19 his agent for consumption or use or any other purpose;
- 20 (e) "Vendor" shall mean any person engaged in this  
21 state in furnishing services taxed by this article or making  
22 sales of tangible personal property;
- 23 (f) "Ultimate consumer" or "consumer" shall mean a  
24 person who uses or consumes services or personal property;
- 25 (g) "Business" shall include all activities engaged in or  
26 caused to be engaged in with the object of gain or economic  
27 benefit, direct or indirect, and all activities of the state and  
28 its political subdivisions which involve sales of tangible  
29 personal property or the rendering of services when those  
30 service activities compete with or may compete with the  
31 activities of other persons;
- 32 (h) "Tax" shall include all taxes, interest and penalties  
33 levied hereunder;
- 34 (i) "Service" or "selected service" shall include all  
35 nonprofessional activities engaged in for other persons for a  
36 consideration, which involve the rendering of a service as  
37 distinguished from the sale of tangible personal property,  
38 but shall not include contracting, personal services or the  
39 services rendered by an employee to his employer or any  
40 service rendered for resale;
- 41 (j) "Purchaser" shall mean a person who purchases  
42 tangible personal property or a service taxed by this article;
- 43 (k) "Personal service" shall include those:
- 44 (1) Compensated by the payment of wages in the  
45 ordinary course of employment;
- 46 (2) Rendered to the person of an individual without, at  
47 the same time, selling tangible personal property, such as



48 nursing, barbering, shoe shining, manicuring and similar  
49 services;

50 (l) "Taxpayer" shall mean any person liable for the tax  
51 imposed by this article;

52 (m) "Drugs" shall include all sales of drugs or  
53 appliances to a purchaser, upon prescription of a physician  
54 or dentist and any other professional person licensed to  
55 prescribe.

56 (n) (1) "Directly used or consumed" in the activities of  
57 contracting, manufacturing, transportation, transmission,  
58 communication or the production of natural resources shall  
59 mean used or consumed in those activities or operations  
60 which constitute an integral and essential part of such  
61 activities, as contrasted with and distinguished from those  
62 activities or operations which are simply incidental,  
63 convenient or remote to such activities.

64 (2) Uses of property or consumption of services which  
65 constitute direct use or consumption in the activities of  
66 contracting, manufacturing, transportation, transmission,  
67 communication or the production of natural resources shall  
68 include only:

69 (A) In the case of tangible personal property, physical  
70 incorporation of property into a finished product resulting  
71 from manufacturing production or the production of  
72 natural resources or resulting from contracting activity;

73 (B) Causing a direct physical, chemical or other change  
74 upon property undergoing manufacturing production or  
75 production of natural resources or which is the subject of  
76 contracting activity;

77 (C) Transporting or storing property undergoing  
78 transportation, communication, transmission,  
79 manufacturing production, or production of natural  
80 resources or which is the subject of contracting activity;

81 (D) Measuring or verifying a change in property directly  
82 used in transportation, communication, transmission,  
83 manufacturing production or production of natural  
84 resources or contracting activity;

85 (E) Physically controlling or directing the physical  
86 movement or operation of property directly used in  
87 transportation, communication, transmission,  
88 manufacturing production or production of natural  
89 resources or contracting activity;

90 (F) Directly and physically recording the flow of

91 property undergoing transportation, communication,  
92 transmission, manufacturing production or production of  
93 natural resources or which is the subject of contracting  
94 activity;

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

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

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

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

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

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

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

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

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

133 (A) Heating and illumination of office buildings;

- 134 (B) Janitorial or general cleaning activities;  
135 (C) Personal comfort of personnel;  
136 (D) Production planning, scheduling of work, or  
137 inventory control;  
138 (E) Marketing, general management, supervision,  
139 finance, training, accounting and administration; or  
140 (F) An activity or function incidental or convenient to  
141 transportation, communication, transmission,  
142 manufacturing production or production of natural  
143 resources or contracting activity, rather than an integral  
144 and essential part of such activities.
- 145 (o) "Contracting" shall mean the furnishing of work, or  
146 both materials and work, in fulfillment of a contract for the  
147 construction, alteration, repair, decoration or improvement  
148 of a new or existing building or structure, or any part  
149 thereof, or for removal or demolition of a building or  
150 structure, or any part thereof, or for the alteration,  
151 improvement or development of real property. For purposes  
152 of this definition, the term "structure" shall include, but not  
153 be limited to, everything built up or composed of parts  
154 joined together in some definite manner and attached to  
155 real property, or which adds utility to a particular parcel of  
156 property and is intended to remain there for an indefinite  
157 period of time.
- 158 (p) "Manufacturing" shall mean a systematic operation  
159 or integrated series of systematic operations engaged in as a  
160 business or segment of a business which transforms or  
161 converts tangible personal property by physical, chemical  
162 or other means into a different form, composition or  
163 character from that in which it originally existed.
- 164 (q) "Transportation" shall mean the act or process of  
165 conveying, as a commercial enterprise, passengers of goods  
166 from one place or geographical location to another place or  
167 geographical location.
- 168 (r) "Transmission" shall mean the act or process of  
169 causing natural gas to pass or be conveyed from one place or  
170 geographical location to another place or geographical  
171 location through a pipeline or other medium for commercial  
172 purposes.
- 173 (s) "Communication" shall mean all telephone, radio,  
174 light, light wave, radio telephone, telegraph and other  
175 communication or means of communication, whether used  
176 for voice communication, computer data transmission or

177 other encoded symbolic information transfers and shall  
178 include commercial broadcast radio, commercial broadcast  
179 television and cable television.

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

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

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

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

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

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

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

12 him under this article and such discount shall not be  
13 construed as a profit in violation of this section.

**§11-15-5a. Discount for expense in collection and remittance.**

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

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

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

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

**§11-15-9. Exemptions.**

1 The following sales and services shall be exempt:

- 2 (a) Sales of gas, steam and water delivered to consumers  
3 through mains or pipes, and sales of electricity;
- 4 (b) Sales of textbooks required to be used in any of the  
5 schools of this state;
- 6 (c) Sales of property or services to the state, its  
7 institutions or subdivisions, and to the United States,  
8 including agencies of federal, state or local governments for  
9 distribution in public welfare or relief work;
- 10 (d) Sales of motor vehicles which are titled by the  
11 department of motor vehicles and which are subject to the  
12 tax imposed by section four, article three, chapter  
13 seventeen-a of this code;

14 (e) Sales of property or services to churches and bona  
15 fide charitable organizations who make no charge  
16 whatsoever for the services they render: *Provided*, That the  
17 exemption herein granted shall apply only to services,  
18 equipment, supplies and materials directly used or  
19 consumed by these organizations, and shall not apply to  
20 purchases of gasoline or special fuel;

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

34 (g) Sales of property or services to persons engaged in  
35 this state in the business of contracting, manufacturing,  
36 transportation, transmission, communication or in the  
37 production of natural resources: *Provided*, That the  
38 exemption herein granted shall apply only to services,  
39 machinery, supplies and materials directly used or  
40 consumed in the businesses or organizations named above,  
41 and shall not apply to purchases of gasoline or special fuel:  
42 *Provided, however*, That on and after the first day of July,  
43 one thousand nine hundred eighty-seven, the exemption  
44 provided in this subsection shall apply only to services,  
45 machinery, supplies and materials directly used or  
46 consumed in the activities of contracting, manufacturing,  
47 transportation, transmission, communication or the  
48 production of natural resources in the businesses or  
49 organizations named above and shall not apply to  
50 purchases of gasoline or special fuel;

51 (h) An isolated transaction in which any tangible  
52 personal property is sold, transferred, offered for sale, or  
53 delivered by the owner thereof or by his representative for  
54 the owner's account, such sale, transfer, offer for sale or  
55 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

99 equipment, including construction and automotive, made  
100 to any volunteer fire department organized and  
101 incorporated under the laws of the state of West Virginia:  
102 *Provided*, That sales of gasoline and special fuel shall be  
103 taxable;

104 (m) Sales of newspapers when delivered to consumers  
105 by route carriers;

106 (n) Sales of drugs dispensed upon prescription and sales  
107 of insulin to consumers for medical purposes;

108 (o) Sales of radio and television broadcasting time, pre-  
109 printed advertising circulars, and newspaper and outdoor  
110 advertising space for the advertisement of goods or  
111 services;

112 (p) Sales and services performed by day care centers;

113 (q) Casual and occasional sales of property or services  
114 not conducted in a repeated manner or in the ordinary  
115 course of repetitive and successive transactions of like  
116 character by corporations or organizations qualified under  
117 section 501(c)(3) of the Internal Revenue Code of 1986, as  
118 amended, or under section 501(c)(4) of the Internal Revenue  
119 Code of 1986, as amended;

120 (r) Sales of property or services to a school which has  
121 approval from the West Virginia board of regents to award  
122 degrees, which has its principal campus in this state, and  
123 which is exempt from federal and state income taxes under  
124 section 501(c)(3) of the Internal Revenue Code of 1986, as  
125 amended: *Provided*, That sales of gasoline and special fuel  
126 shall be taxable;

127 (s) Sales of mobile homes to be utilized by purchasers as  
128 their principal year-round residence and dwelling:  
129 *Provided*, That these mobile homes shall be subject to tax at  
130 the three percent rate;

131 (t) Sales of lottery tickets and materials by licensed  
132 lottery sales agents and lottery retailers authorized by the  
133 state lottery commission, under the provisions of article  
134 twenty-two, chapter twenty-nine of this code;

135 (u) Leases of motor vehicles titled pursuant to the  
136 provisions of article three, chapter seventeen-a of this code  
137 to lessees for a period of thirty or more consecutive days.  
138 This exemption shall apply to leases executed on or after the  
139 first day of July, one thousand nine hundred eighty-seven,  
140 and to payments under long-term leases executed before  
141 such date, for months thereof beginning on or after such  
142 date;



143 (v) Notwithstanding any provisions in this section to the  
144 contrary, sales of property and services to persons subject to  
145 tax under articles thirteen, thirteen-a or thirteen-b of this  
146 chapter: *Provided*, That the exemption herein granted shall  
147 apply only to property or services used or consumed in  
148 activities gross receipts from which are subject to tax under  
149 such articles and shall not apply to purchases of gasoline or  
150 special fuel;

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

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

166 (y) Sales of tickets for activities sponsored by  
167 elementary and secondary schools located within this state;  
168 and

169 (z) Sales of electronic data processing services and  
170 related software: *Provided*, That for the purposes of this  
171 subsection (z) "electric data processing services" means (1)  
172 the processing of another's data, including all processes  
173 incident to processing of data such as keypunching,  
174 keystroke verification, rearranging, or sorting of previously  
175 documented data for the purpose of data entry or automatic  
176 processing, and changing the medium on which data is  
177 sorted, whether these processes are done by the same person  
178 or several persons; and (2) providing access to computer  
179 equipment for the purpose of processing data or examining  
180 or acquiring data stored in or accessible to such computer  
181 equipment.

**§11-15-9b. Method for claiming exemptions, refunds of tax,  
credit against other taxes.**

1 (a) Any person having a right or claim to any exemption

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

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

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

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

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

40 (3) If the taxpayer is subject to the tax imposed under  
41 article thirteen-a of this chapter, the taxpayer may credit  
42 the amount of consumers sales and service tax  
43 overpayments remaining after application of parts (1) and  
44 (2) of this subsection against the taxpayer's quarterly or

45 monthly remittance of the tax imposed under said article  
46 thirteen-a otherwise due; or

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

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

62 (6) If the taxpayer is subject to the tax imposed under  
63 article twenty-one of this chapter, the taxpayer may credit  
64 the amount of consumers sales and service tax  
65 overpayments remaining after application of parts (1), (2),  
66 (3), (4) and (5) of this subsection against the taxpayer's  
67 installment of estimated tax imposed under said article  
68 twenty-one and otherwise due under section fifty-six,  
69 article twenty-one of this chapter; or

70 (7) If the taxpayer is subject to the tax imposed under  
71 article twenty-three of this chapter, the taxpayer may  
72 credit the amount of consumers sales and service tax  
73 overpayments remaining after application of parts (1), (2),  
74 (3), (4), (5) and (6) of this subsection against the taxpayer's  
75 annual remittance of the tax imposed under said article  
76 twenty-three and otherwise due; or

77 (8) If the taxpayer is required to deduct and withhold  
78 tax under article twenty-one of this chapter, the taxpayer  
79 may credit the amount of consumers sales and service tax  
80 overpayments remaining after application of parts (1), (2),  
81 (3), (4), (5), (6) and (7) of this subsection against the  
82 taxpayer's monthly remittance of the tax withheld under  
83 said article twenty-one and otherwise due.

84 (d) Any person asserting or exercising a claim of  
85 exemption from the tax imposed by this article under  
86 subsections (b) or (c) of this section shall file with the tax  
87 commissioner an application for exemption in such form as

88 the tax commissioner shall prescribe and such affidavits,  
89 invoices, sales slips, records or documents as the tax  
90 commissioner may require to prove or verify the taxpayer's  
91 right and entitlement to such exemption. The tax  
92 commissioner may inspect or examine the records, books,  
93 papers, documents, affidavits, sales slips and invoices of a  
94 taxpayer or any other person to verify the truth and  
95 accuracy of any report or return or to ascertain whether the  
96 tax imposed by this article has been paid.

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

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

124 (f) Any credit of consumers sales and service tax  
125 overpayments against taxes under subsection (c) of this  
126 section shall be taken within one year after the payment of  
127 the said consumers sales and service tax by the consumer to  
128 the vendor. Any such credit or claim of entitlement to such  
129 credit made or asserted more than one year after the  
130 payment of such tax by the consumer to the vendor shall be

131 null and void, and such consumers sales and service tax  
132 overpayments shall be forfeited unless refunded under  
133 subsection (b) of this section.

134 (g) Any assignment of the right or entitlement to a  
135 refund or credit arising under this section shall be subject to  
136 strict proof, and any assignee claiming a right or  
137 entitlement to an assigned refund or credit shall submit an  
138 affidavit in such form as the tax commissioner shall  
139 prescribe signed by the assignor acknowledging the  
140 assignment. The assignee shall attest to the assignment and  
141 the terms thereof on his signed application filed under  
142 subsection (d) of this section for refund or credit, and will be  
143 subject to the penalties provided under West Virginia law  
144 for perjury for any falsehood set forth therein and will be  
145 subject to the penalties set forth in article nine of this  
146 chapter for any violation thereof. Except as provided in this  
147 subsection (g), no payment of a refund arising under this  
148 section shall be made to any person other than the taxpayer  
149 making the original overpayment of consumers sales and  
150 service tax.

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

155 (i) Any claim for a refund of consumers sales and service  
156 tax overpayments or for a tax credit for consumers sales and  
157 service tax overpayments which is not timely filed or not  
158 filed in proper form or in accordance with the requirements  
159 of this section shall not be construed to constitute a moral  
160 obligation of the state of West Virginia for payment. No  
161 overpayment of consumers sales and service tax made  
162 under this section shall be subject to subsection (d), section  
163 seventeen, article ten of this chapter or paragraph (e)(1),  
164 section seventeen, article ten of this chapter.

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

**§11-15-9c. Delivery of a certificate of exemption in lieu of tax.**

1 Persons having a right to exemption set forth in  
2 subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u),  
3 (x) and (y) shall, in lieu of paying the tax imposed by this  
4 article, execute a certificate of exemption in such form as

5 the tax commissioner may require, and such executed  
6 exemption certificate shall be delivered to the vendor in  
7 such manner as the tax commissioner may require.

**§11-15-9d. Direct pay permits.**

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

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

33 (c) A permit issued pursuant to this section shall  
34 continue to be valid until expiration of the business's  
35 registration year under article twelve of this chapter. This  
36 permit shall automatically be renewed when the business's  
37 business registration certificate is issued for the next  
38 succeeding fiscal year, unless the permit is surrendered by

39 the holder or canceled for cause by the tax commissioner.

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

57 (e) Upon the expiration, cancellation or surrender of a  
58 direct payment permit, the provisions of this chapter,  
59 without regard to this section, shall thereafter apply to the  
60 person who previously held such permit, and such person  
61 shall promptly so notify in writing vendors from whom  
62 purchases, leases and storage of tangible personal property  
63 are made of such cancellation or surrender. Upon receipt of  
64 such notice, the vendor shall be subject to the provisions of  
65 this chapter, without regard to this section, with respect to  
66 all sales, distributions, leases or storage of tangible  
67 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.**

1 (a) An excise tax is hereby levied and imposed on the use  
2 in this state of tangible personal property or taxable  
3 services, to be collected and paid as hereinafter provided, at  
4 the rate of five percent of the purchase price of such  
5 property or taxable services. "Taxable services," for the  
6 purposes of this article, means services of the nature that  
7 are subject to the tax imposed by article fifteen of this  
8 chapter. In this article, wherever the words "tangible

9 personal property” or “property” appear, the same shall  
10 include the words “or taxable services,” where the context  
11 so requires.

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

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

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

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

### §11-15A-3. Exemptions.

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

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

12 (2) Tangible personal property or services, the gross  
13 receipts from the sale of which are exempt from the sales  
14 tax by the terms of article fifteen, chapter eleven of the code



15 of West Virginia, one thousand nine hundred thirty-one, as  
16 amended, and the property or services are being used for the  
17 purpose for which it was exempted.

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

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

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

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

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

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

1 (a) Any person having a right or claim to an exemption  
2 from the tax imposed by this article by reason of any  
3 exemption set forth in section nine, article fifteen of this

4 chapter except those exemptions set forth in subsections  
5 (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u), (x) and (y) of  
6 said section nine shall pay to the vendor the tax imposed by  
7 this article and may exercise or assert such exemption only  
8 in accordance with subsection (b) or subsection (c) of this  
9 section.

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

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

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

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

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

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

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

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

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

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

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

89 In addition to the powers of the tax commissioner set

90 forth in article ten of this chapter, as a further means of  
91 obtaining the records, books, papers, documents, affidavits,  
92 sales slips or invoices of a taxpayer or any other person and  
93 ascertaining the amount of taxes paid or due under this  
94 article or article fifteen of this chapter or any report, form,  
95 document or affidavit required under this article or article  
96 fifteen of this chapter, the commissioner shall have the  
97 power to examine witnesses under oath; and if any witness  
98 shall fail or refuse at the request of the commissioner to  
99 grant access to the books, records, papers, documents,  
100 affidavits, sales slips or invoices requested by the  
101 commissioner, the commissioner shall certify the facts and  
102 the names to the circuit court of the county having  
103 jurisdiction of the party, and such court shall thereupon  
104 issue a subpoena duces tecum to such party to appear before  
105 the commissioner, at a place designated within the  
106 jurisdiction of such court, on a day fixed.

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

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

123 (g) Any assignment of the right or entitlement to a  
124 refund or credit arising under this section shall be subject to  
125 strict proof, and any assignee claiming a right or  
126 entitlement to an assigned refund or credit shall submit an  
127 affidavit in such form as the tax commissioner shall  
128 prescribe signed by the assignor acknowledging the  
129 assignment. The assignee shall attest to the assignment and  
130 the terms thereof of his signed application filed under  
131 subsection (e) of this section for refund or credit, and will be  
132 subject to the penalties provided under West Virginia law

133 for perjury for any falsehood set forth therein and will be  
134 subject to the penalties set forth in article nine of this  
135 chapter for any violation thereof. Except as provided in this  
136 subsection (h), no payment of a refund arising under this  
137 section shall be made to any person other than the taxpayer  
138 making the original overpayment of consumers sales and  
139 service tax.

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

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

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

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

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

**§11-5A-3d. Direct pay permits.**

1 (a) Notwithstanding any other provision of this article,  
2 the tax commissioner may, in his discretion, authorize a  
3 person (as defined in section two of article fifteen) that is a  
4 user, consumer, distributor or lessee to which sales or leases  
5 of tangible personal property are made or services provided  
6 to pay any tax levied by this article or article fifteen of this

7 chapter directly to the tax commissioner and waive the  
8 collection of the tax by that person's vendor. No such  
9 authority shall be granted or exercised except upon  
10 application to the tax commissioner and after issuance by  
11 the tax commissioner of a direct pay permit for purchases  
12 made from the vendor or vendors specified therein. If a  
13 direct pay permit is issued, then payment of the tax imposed  
14 by this article or article fifteen of this chapter on all sales  
15 and leases of tangible personal property and sales of  
16 taxable services from designated vendors shall be made  
17 directly to the tax commissioner by the permit holder.

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

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

40 (d) Persons who hold a direct payment permit which has  
41 not been canceled shall not be required to pay the tax to the  
42 vendor as otherwise provided in this article or article fifteen  
43 of this chapter. Such persons shall notify each vendor from  
44 whom tangible personal property is purchased or leased or  
45 from whom services are purchased of their direct payment  
46 permit number and that the tax is being paid directly to the  
47 tax commissioner. Upon receipt of such notice, such vendor  
48 shall be absolved from all duties and liabilities imposed by  
49 this chapter for the collection and remittance of the tax

50 with respect to sales, distributions, leases or storage of  
 51 tangible personal property and sales of services to such  
 52 permit holder. Vendors who make sales upon which the tax  
 53 is not collected by reason of the provisions of this section  
 54 shall maintain records in such manner that the amount  
 55 involved and identity of each such purchaser may be  
 56 ascertained.

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

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

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

**ARTICLE 21. PERSONAL INCOME TAX.**

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

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

6 If the West Virginia taxable	
7 income is:	The tax is:
8 Not over \$10,000	3% of the taxable income

9	Over \$10,000 but not over \$25,000	\$300.00 plus 4% of excess
10		over \$10,000
11	Over \$25,000 but not over \$40,000	\$900.00 plus 5% of excess
12		over \$25,000
13	Over \$40,000 but not over \$60,000	\$1650.00 plus 6% of excess
14		over \$40,000
15	Over \$60,000	\$2850.00 plus 6.5% of
16		excess over \$60,000

17 (b) *Applicability of this section.* — The provisions of this  
 18 section shall be applicable in determining the rate of tax  
 19 imposed by this article for all taxable years beginning after  
 20 the thirty-first day of December, one thousand nine  
 21 hundred eighty-six.

**§11-21-4f. Effect of rate changes during taxable year.**

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

13 (b) For purposes of subsection (a):

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

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

**§11-21-9. Meaning of terms.**

1 Any term used in this article shall have the same meaning  
 2 as when used in a comparable context in the laws of the  
 3 United States relating to income taxes, unless a different  
 4 meaning is clearly required. Any reference in this article to  
 5 the laws of the United States shall mean the provisions of  
 6 the Internal Revenue Code of 1986, as amended, and such  
 7 other provisions of the laws of the United States as relate to



8 the determination of income for federal income tax  
9 purposes. All amendments made to the laws of the United  
10 States prior to the first day of January, one thousand nine  
11 hundred eighty-seven, shall be given effect in determining  
12 the taxes imposed by this article for any taxable year  
13 beginning the first day of January, one thousand nine  
14 hundred eighty-six, or thereafter, but no amendment to the  
15 laws of the United States made on or after the first day of  
16 January, one thousand nine hundred eighty-seven, shall be  
17 given effect.

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

1 (a) *General.* — The West Virginia taxable income of a  
2 resident individual shall be his West Virginia adjusted gross  
3 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 is determined on a separate  
7 federal return, their West Virginia taxable incomes shall be  
8 separately determined.

9 (2) If the federal taxable income of husband and wife is  
10 determined on a joint federal return, or if neither files a  
11 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: *Provided*, That  
18 the election allowed in subparagraph (B) shall not be  
19 available for a husband and wife for taxable years  
20 beginning after the thirty-first day of December, one  
21 thousand nine hundred eighty-six.

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

28 (c) *Effective date.* — This section, as amended, shall  
29 apply to all taxable years after the thirty-first day of  
30 December, one thousand nine hundred eighty-six.

**§11-21-12. West Virginia adjusted gross income of resident individual.**

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

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

12 (1) Interest income on obligations of any state other  
13 than this state, or of a political subdivision of any such other  
14 state unless created by compact or agreement to which this  
15 state is a party;

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

21 (3) Income taxes imposed by this state or any other  
22 taxing jurisdiction, to the extent deductible in determining  
23 federal adjusted gross income and not credited against  
24 federal income tax: *Provided*, That this modification shall  
25 not be made for taxable years beginning after the thirty-  
26 first day of December, one thousand nine hundred eighty-  
27 six;

28 (4) Interest on indebtedness incurred or continued to  
29 purchase or carry obligations or securities the income from  
30 which is exempt from tax under this article, to the extent  
31 deductible in determining federal adjusted gross income;

32 (5) Interest on a depository institution tax-exempt  
33 savings certificate which is allowed as an exclusion from  
34 federal gross income under section 128 of the Internal  
35 Revenue Code, for the federal taxable year;

36 (6) The amount allowed as a deduction from federal  
37 gross income under section 221 of the Internal Revenue  
38 Code by married couples who file a joint federal return for  
39 the federal taxable year: *Provided*, That this modification  
40 shall not be made for taxable years beginning after the

41 thirty-first day of December, one thousand nine hundred  
42 eighty-six; and

43 (7) The deferral value of certain income that is not  
44 recognized for federal tax purposes, which value shall be an  
45 amount equal to a percentage of the amount allowed as a  
46 deduction in determining federal adjusted gross income  
47 pursuant to the accelerated cost recovery system under  
48 section 168 of the Internal Revenue Code for the federal  
49 taxable year, with the percentage of the federal deduction  
50 to be added as follows with respect to the following  
51 recovery property: Three-year property — no modification;  
52 five-year property — ten percent; ten-year property —  
53 fifteen percent; fifteen-year public utility property —  
54 twenty-five percent; and fifteen-year real property —  
55 thirty-five percent: *Provided*, That this modification shall  
56 not apply to any person whose federal deduction is  
57 determined by the use of the straight line method: *Provided*,  
58 *however*, That this modification shall not be made for  
59 taxable years beginning after the thirty-first day of  
60 December, one thousand nine hundred eighty-six;

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

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

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

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

84 adjusted basis: *Provided, however,* That if such gain is  
85 considered a long-term capital gain for federal income tax  
86 purposes, the modification shall be limited to forty percent  
87 of such portion of the gain: *Provided further,* That this  
88 modification shall not be made for taxable years beginning  
89 after the thirty-first day of December, one thousand nine  
90 hundred eighty-six;

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

95 (5) Annuities, retirement allowances, returns of  
96 contributions and any other benefit received under the  
97 public employees retirement system, the department of  
98 public safety death, disability and retirement fund, the  
99 state teachers retirement system and all forms of military  
100 retirement, including regular armed forces, reserves and  
101 national guard, including any survivorship annuities  
102 derived therefrom, to the extent includible in gross income  
103 for federal income tax purposes: *Provided,* That  
104 notwithstanding any provisions in this code to the contrary  
105 this modification shall be limited to the first two thousand  
106 dollars of benefits received under the public employees  
107 retirement system, the state teachers retirement system and  
108 all forms of military retirement including regular armed  
109 forces, reserves and national guard for taxable years  
110 beginning after the thirty-first day of December, one  
111 thousand nine hundred eighty-six;

112 (6) Retirement income received in the form of pensions  
113 and annuities after the thirty-first day of December, one  
114 thousand nine hundred seventy-nine, under any police or  
115 firemen's retirement system, including any survivorship  
116 annuities derived therefrom, to the extent includible in  
117 gross income for federal income tax purposes;

118 (7) Federal adjusted gross income in the amount of six  
119 thousand dollars received from any source after the thirty-  
120 first day of December, one thousand nine hundred eighty-  
121 six, by any person who has attained the age of sixty-five on  
122 or before the last day of the taxable year, or by any person  
123 certified by proper authority as permanently and totally  
124 disabled, regardless of age, on or before the last day of the  
125 taxable year, to the extent includible in federal adjusted

126 gross income for federal tax purposes: *Provided*, That if a  
127 person has a medical certification from a prior year and he  
128 is still permanently and totally disabled, a copy of the  
129 original certificate is acceptable as proof of disability. A  
130 copy of the form filed for the federal disability income tax  
131 exclusion is acceptable: *Provided, however*, That

132 (i) Where the total modification under subdivisions (1),  
133 (2), (5) and (6) of this subsection is eight thousand dollars  
134 per person or more, no deduction shall be allowed under  
135 this subdivision, and

136 (ii) Where the total modification under subdivisions (1),  
137 (2), (5) and (6) of this subsection is less than eight thousand  
138 dollars per person, the total modification allowed under  
139 this subdivision for all gross income received by such  
140 person shall be limited to the difference between eight  
141 thousand dollars and the sum of modifications under such  
142 subdivisions;

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

151 (i) Where the total modification under subdivisions (1),  
152 (2), (5), (6) and (7) of this subsection is eight thousand  
153 dollars or more, no deduction shall be allowed under this  
154 subdivision, and

155 (ii) Where the total modification under subdivisions (1),  
156 (2), (5), (6) and (7) of this subsection is less than eight  
157 thousand dollars per person, the total modification allowed  
158 under this subdivision for all gross income received by such  
159 person shall be limited to the difference between eight  
160 thousand dollars and the sum of such subdivisions;

161 (9) Any pay or allowances received, after the thirty-first  
162 day of December, one thousand nine hundred seventy-nine,  
163 by West Virginia residents who have not attained the age of  
164 sixty-five, as compensation for active service in the armed  
165 forces of the United States: *Provided*, That such deduction  
166 shall be limited to an amount not to exceed four thousand  
167 dollars: *Provided, however*, That this modification shall not

168 be made for taxable years beginning after the thirty-first  
169 day of December, one thousand nine hundred eighty-six;

170 (10) Gross income to the extent included in federal  
171 adjusted gross income under section 86 of the Internal  
172 Revenue Code for federal income tax purposes: *Provided*,  
173 That this modification shall not be made for taxable years  
174 beginning after the thirty-first day of December, one  
175 thousand nine hundred eighty-six;

176 (11) The amount of any lottery prize awarded by the  
177 West Virginia state lottery commission, to the extent  
178 properly included in gross income for federal income tax  
179 purposes; and

180 (12) Any other income which this state is prohibited  
181 from taxing under the laws of the United States.

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

188 (e) *Partners.* — The amounts of modifications required  
189 to be made under this section by a partner, which relate to  
190 items of income, gain, loss or deduction of a partnership,  
191 shall be determined under section seventeen of this article.

192 (f) *Husband and wife.* — If husband and wife determine  
193 their federal income tax on a joint return but determine  
194 their West Virginia income taxes separately, they shall  
195 determine their West Virginia adjusted gross incomes  
196 separately as if their federal adjusted gross incomes had  
197 been determined separately.

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

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

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

1 (a) *General.* — The West Virginia standard deduction of

2 a resident individual, or of husband and wife whose West  
3 Virginia taxable income is determined jointly, shall be ten  
4 per centum of West Virginia adjusted gross income or one  
5 thousand dollars, whichever is less.

6 (b) *Husband and wife determining income separately.*  
7 — The West Virginia standard deductions of husband and  
8 wife whose West Virginia taxable incomes are determined  
9 separately (whether or not on a single form) shall not exceed  
10 ten per centum of the aggregate of their separate West  
11 Virginia adjusted gross incomes or one thousand dollars,  
12 whichever is less, but may be taken by either or divided  
13 between them in such proportions as they may elect.

14 (c) *Expiration.* — The West Virginia standard deduction  
15 provided in this section shall not apply to taxable years  
16 beginning after the thirty-first day of December, one  
17 thousand nine hundred eighty-six.

**§11-21-15. West Virginia itemized deduction of a resident individual.**

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

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

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

21 (c) *Modifications reducing federal itemized deductions.*  
22 — The total amount of deductions from federal adjusted  
23 gross income shall be reduced by the amount of such federal  
24 deductions for:

25 (1) Income taxes imposed by this state or any other  
26 taxing jurisdiction; and

27 (2) Interest on indebtedness incurred or continued to  
28 purchase or carry obligations or securities the income from  
29 which is exempt from tax under this article.

30 (d) *Partners.* — The amounts of modifications under  
31 subsection (c) required to be made by a partner with respect  
32 to items of deduction of a partnership shall be determined  
33 under section seventeen.

34 (e) *Expiration.* — The West Virginia itemized deduction  
35 provided in this section shall not apply to taxable years  
36 beginning after the thirty-first day of December, one  
37 thousand nine hundred eighty-six.

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

1 (a) *General.* — For any tax imposed under the  
2 provisions of this article with respect to any taxable year  
3 prior to the first day of January, one thousand nine hundred  
4 eighty-three, a resident individual shall be allowed a West  
5 Virginia exemption of six hundred dollars for each  
6 exemption for which he is entitled to a deduction for the  
7 taxable year for federal income tax purposes. With respect  
8 to any taxable year beginning on or after the first day of  
9 January, one thousand nine hundred eighty-three, and  
10 prior to the first day of January, one thousand nine hundred  
11 eighty-four, said exemption shall be seven hundred dollars;  
12 with respect to any taxable year beginning on or after the  
13 first day of January, one thousand nine hundred eighty-  
14 four, said exemption shall be eight hundred dollars; and  
15 with respect to any taxable year beginning on or after the  
16 first day of January, one thousand nine hundred eighty-  
17 seven, said exemption shall be two thousand dollars.

18 (b) *Husband and wife.* — If the West Virginia income  
19 taxes of a husband and wife are separately determined but  
20 their federal income tax is determined on a joint return,  
21 each of them shall be separately entitled, with respect to  
22 any taxable year prior to the first day of January, one  
23 thousand nine hundred eighty-three, to a West Virginia  
24 exemption of six hundred dollars for each federal  
25 exemption to which he would be separately entitled for the  
26 taxable year if their federal income taxes had been  
27 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.**

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

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

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

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

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

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

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

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

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

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

39 (c) *Income and deductions partly from West Virginia*  
40 *sources.* — If a business, trade, profession or occupation is

41 carried on partly within and partly without this state, as  
42 determined under regulations of the tax commissioner, the  
43 items of income, gain, loss and deduction derived from or  
44 connected with West Virginia sources shall be determined  
45 by apportionment and allocation under such regulation.

46 (d) *Purchase and sale for own account.* — A  
47 nonresident, other than a dealer holding property primarily  
48 for sale to customers in the ordinary course of his trade or  
49 business, shall not be deemed to carry on a business, trade,  
50 profession or occupation in this state solely by reason of the  
51 purchase and sale of property for his own account.

52 (e) *Husband and wife.* — If husband and wife determine  
53 their federal income tax on a joint return but determine  
54 their West Virginia income taxes separately, they shall  
55 determine their West Virginia adjusted gross incomes  
56 separately as if their federal adjusted gross incomes had  
57 been determined separately.

**§11-21-33. West Virginia deduction of a nonresident individual.**

1 The West Virginia deduction of a nonresident individual  
2 shall be his West Virginia standard deduction unless he  
3 elects to deduct his West Virginia itemized deduction under  
4 the conditions set forth in section thirty-five: *Provided,*  
5 That no West Virginia deduction shall be allowed for  
6 taxable years beginning after the thirty-first day of  
7 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  
2 individual shall be ten per centum of his West Virginia  
3 adjusted gross income, or one thousand dollars, whichever  
4 is less. The West Virginia standard deduction of a  
5 nonresident husband or wife shall be determined under the  
6 rules of section fourteen: *Provided,* That no West Virginia  
7 standard deduction shall be allowed for taxable years  
8 beginning after the thirty-first day of December, one  
9 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

2 nonresident individual is determined by itemizing  
3 deductions from his federal adjusted gross income, he may  
4 elect to deduct his West Virginia itemized deduction in lieu  
5 of his West Virginia standard deduction. The West Virginia  
6 itemized deduction of a nonresident individual shall be the  
7 same as the total amount of the following of his deductions  
8 from federal adjusted gross income, as provided in the laws  
9 of the United States for the taxable year (including any  
10 items attributable to him as a partner):

11 (1) Deductions for contributions or gifts to this state or  
12 to any political subdivision thereof, or to any corporation,  
13 trust, community chest, fund, foundation or other entity  
14 organized or operated under the laws of this state;

15 (2) Deductions for alimony or separate maintenance  
16 payments includible in the West Virginia adjusted gross  
17 income of the recipient;

18 (3) Deductions for losses of real or tangible personal  
19 property having an actual situs in this state, arising from  
20 fire, storm, shipwreck or other casualty, or from theft;

21 (4) Deductions, with respect to real or tangible personal  
22 property having an actual situs in this state, for losses (other  
23 than capital losses) incurred in any transaction entered into  
24 for profit but not connected with the taxpayer's trade or  
25 business; and

26 (5) Deductions determined under regulations of the tax  
27 commissioner to be connected with his West Virginia  
28 adjusted gross income, except deductions for income taxes  
29 imposed by this state or any other taxing jurisdiction.

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

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

39 (c) *Expiration.* — The West Virginia itemized deduction  
40 provided in this section shall not apply to taxable years  
41 beginning after the thirty-first day of December, one  
42 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  
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.

**§11-21-51. Returns and liabilities.**

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

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

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

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

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

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

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

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

33 (B) They may elect to file separate West Virginia income  
34 tax returns on a single form if they comply with the

35 requirements of the tax commissioner in setting forth  
36 information, and in such event their tax liabilities shall be  
37 separate: *Provided*, That the election allowed in this  
38 subparagraph (B) shall not be available for a husband and  
39 wife for taxable years beginning after the thirty-first day of  
40 December, one thousand nine hundred eighty-six.

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

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

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

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

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

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

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

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

1 (a) *General*. — Every employer required to deduct and  
2 withhold tax under this article shall, for each calendar  
3 quarter, on or before the last day of the month following the  
4 close of such calendar quarter, file a withholding return as  
5 prescribed by the tax commissioner and pay over to the tax  
6 commissioner the taxes so required to be deducted and  
7 withheld. Where the aggregate amount so deducted and  
8 withheld by any employer is less than twenty-five dollars in  
9 a calendar quarter and the aggregate for the calendar year  
10 can reasonably be expected to be less than one hundred

11 dollars, the tax commissioner may by regulation permit an  
12 employer to file an annual return and pay over to the tax  
13 commissioner the taxes deducted and withheld on or before  
14 the last day of the month following the close of such  
15 calendar year. The tax commissioner may, if he believes  
16 such action necessary for the protection of the revenues,  
17 require any employer to make such return and pay to him  
18 the tax deducted and withheld at any time, or from time to  
19 time.

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

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

53 credit set forth at section three-b, article fifteen-a of this  
54 chapter.

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

#### ARTICLE 23. BUSINESS FRANCHISE TAX.

##### §11-23-3. Definitions.

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

7 (b) *Terms defined.*

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

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

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

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

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

25 (iii) Retained earnings, appropriated and  
26 unappropriated;



27 (iv) Less the cost of treasury stock.

28 (B) In the case of a partnership, the average of the  
29 beginning and ending year balances of the value of  
30 partner's capital accounts from Schedule L of Federal Form  
31 1065, as filed by the taxpayer with the Internal Revenue  
32 Service for the taxable year.

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

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

43 (i) The numerator of which is the sum of the average of  
44 the monthly beginning and ending account balances during  
45 the taxable year (account balances to be determined at cost  
46 in the same manner that such obligations, investments and  
47 loans are reported on Schedule L of the Federal Form 1120  
48 or Federal Form 1065) of the following:

49 (a) Obligations and securities of the United States, or of  
50 any agency, authority, commission or instrumentality of the  
51 United States and any other corporation or entity created  
52 under the authority of the United States Congress for the  
53 purpose of implementing or furthering an objective of  
54 national policy;

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

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

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

64 (ii) The denominator of which is the average of the  
65 monthly beginning and ending account balances of the total  
66 assets of the taxpayer which are shown on Schedule L of the  
67 Federal Form 1120, as filed by the taxpayer with the  
68 Internal Revenue Service or, in the case of partnerships,

69 Schedule L of Federal Form 1065, as filed by the taxpayer  
70 with the Internal Revenue Service.

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

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

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

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

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

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

107 The activity of agriculture and farming shall mean not  
108 less than five acres of land and the improvements thereon,  
109 used in the production of the aforementioned activities, and  
110 shall mean the production of at least one thousand dollars  
111 of products per annum through the conduct of such

112 principal business activities as set forth in section ten,  
113 article one-a, chapter eleven of this code.

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

120 (10) *Federal Form 1120*. — The term “Federal Form  
121 1120” means the annual federal income tax return of any  
122 corporation made pursuant to the United States Internal  
123 Revenue Code of 1986, as amended, or in successor  
124 provisions of the laws of the United States, in respect to the  
125 federal taxable income of a corporation, and filed with the  
126 Federal Internal Revenue Service. In the case of a  
127 corporation that elects to file a federal income tax return as  
128 part of an affiliated group, but files as a separate  
129 corporation under this article, then as to such corporation  
130 Federal Form 1120 means its pro forma Federal Form 1120.

131 (11) *Federal Form 1065*. — The term “Federal Form  
132 1065” means the annual federal income tax return of a  
133 partnership made pursuant to the United States Internal  
134 Revenue Code of 1986, as amended, or in successor  
135 provisions of the laws of the United States, in respect to the  
136 federal taxable income of a partnership, and filed with the  
137 Federal Internal Revenue Service.

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

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

153 (14) *Fiscal year*. — The term “fiscal year” means an  
154 accounting period of twelve months ending on any day

155 other than the last day of December, and on the basis of  
156 which the taxpayer is required to report for federal income  
157 tax purposes.

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

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

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

176 (18) *Person.* — The term “person” includes any  
177 corporation or partnership.

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

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

186 (21) *State.* — The term “state” means a state of the  
187 United States, the District of Columbia, the  
188 Commonwealth of Puerto Rico, or any territory or  
189 possession of the United States.

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

197 (23) *Taxable year.* — The term “taxable year” means the

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

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

208 (A) Is subject to a net income tax, a franchise tax  
209 measured by net income, a franchise tax for the privilege of  
210 doing business or a corporate stock tax; or

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

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

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

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

221 (28) *Treasury stock.* — The term "treasury stock" means  
222 shares of a corporation which have been issued and have  
223 been subsequently acquired by and belong to such  
224 corporation, and have not been canceled or restored to the  
225 status of authorized but unissued shares. Treasury stock is  
226 deemed to be issued shares, but not outstanding shares.

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

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

1 The following organizations and persons shall be exempt

2 from the tax imposed by this article to the extent provided  
3 in this section:

4 (a) Natural persons doing business in this state that are  
5 not doing business in the form of a partnership (as defined  
6 in section three of this article) or in the form of a  
7 corporation (as defined in section three of this article). Such  
8 persons include persons doing business as sole proprietors,  
9 sole practitioners and other self-employed persons.

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

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

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

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

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

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

#### §11-23-9. Annual returns.

1 (a) *In general.* — Every person subject to the tax

2 imposed by this article shall make and file an annual return  
3 for the taxable year with the tax commissioner on or before:

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

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

8 The annual return shall include such information as the  
9 tax commissioner may require for determining the amount  
10 of taxes due under this article for the taxable year.

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

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

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

1 (a) *Requirement of declaration.* — Every taxpayer  
2 subject to tax under this article shall file a declaration of  
3 estimated tax for the taxable year if the taxpayer's liability  
4 for tax under this article can reasonably be expected to  
5 exceed twelve thousand dollars for the taxable year. A  
6 taxpayer not required by this section to file a declaration  
7 and pay estimated tax may elect to so file and pay.

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

11 (c) *Contents of declaration.* — The declaration shall  
12 contain such information as the tax commissioner may, by  
13 rules or regulations, require, including, but not limited to,  
14 such detailed information as may be necessary to estimate  
15 the taxpayer's liability under section six of this article.

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

21 (e) *Amendment of declaration.* — A taxpayer may  
22 amend his declaration at any time during the taxable year  
23 in accordance with regulations prescribed by the tax  
24 commissioner. If any amendment of a declaration is filed by

25 a taxpayer, the remaining installments, if any, shall be  
26 rateably increased or decreased (as the case may be) to  
27 reflect any increase or decrease in the estimated tax by  
28 reason of such amendment. If any amendment is made after  
29 the fifteenth day of the ninth month of the taxable year, any  
30 increase in the estimated tax by reason thereof shall be paid  
31 at the time of making such amendment.

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

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

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

#### §11-23-17. Credits against tax.

1 (a) A credit shall be allowed against the tax imposed by  
2 this article equal to the amount of franchise tax liability due  
3 under this article, (determined before application of  
4 credits) multiplied by a fraction, the numerator of which is  
5 the gross income of the business subject to tax under article  
6 thirteen-a of this chapter and the denominator of which is  
7 the total amount of gross income derived by the taxpayer  
8 from all activity in West Virginia: *Provided*, That on or after  
9 the first day of July, one thousand nine hundred eighty-  
10 eight, a credit shall be allowed against the tax imposed by  
11 this article equal to the amount of franchise tax liability due  
12 under this article, (determined before application of  
13 credits) multiplied by a fraction, the numerator of which is  
14 the gross income of the business subject to tax under  
15 articles thirteen and thirteen-a of this chapter and the  
16 denominator of which is the total amount of gross income  
17 derived by the taxpayer from all activity in West Virginia.

18 (b) A parent taxpayer who files a separate return under  
19 this article shall be allowed a credit against such taxpayer's  
20 liability for the tax under this article for the amount of net



21 taxes that would have been paid without regard to the  
22 adjustment required by subparagraph (D), paragraph (2),  
23 subsection (b), section three of this article for the taxable  
24 year by a subsidiary corporation or partnership: *Provided*,  
25 That the amount of credit allowed shall not exceed the  
26 amount of tax that would have been paid, without regard to  
27 such adjustment, under this article by the subsidiary or  
28 partnership, multiplied by the percentage of the parent's  
29 ownership of the subsidiary corporation or partnership. In  
30 the case of corporations, this percentage shall be equal to  
31 the percentage of stock of all classes owned by the parent. In  
32 no case shall any credit allowable by this section, which is  
33 not used on an annual return, be carried forward or back,  
34 but instead the same shall be forfeited.

35 (c) A credit shall be allowed against the tax imposed by  
36 this article equal to the amount of liability of the taxpayer  
37 for the taxable year for the full amount of any tax imposed  
38 pursuant to article eight of this chapter on the capital of the  
39 business, as determined under sections fourteen and  
40 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  
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 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  
10 domicile” means the principal place from which the trade  
11 or business of the taxpayer is directed or managed.

12 (3) *Compensation*. — The term “compensation” means

13 wages, salaries, commission and any other form of  
14 remuneration paid to employees for personal services.

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

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

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

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

36 (8) *Federal Form 1120*. — The term “Federal Form  
37 1120” means the annual federal income tax return of any  
38 corporation made pursuant to the United States Internal  
39 Revenue Code of 1986, as amended, or in successor  
40 provisions of the laws of the United States, in respect to the  
41 federal taxable income of a corporation, and filed with the  
42 Federal Internal Revenue Service. In the case of a  
43 corporation that elects to file a federal income tax return as  
44 part of an affiliated group, but files as a separate  
45 corporation under this article, then as to such corporation  
46 Federal Form 1120 means its pro forma Federal Form 1120.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99 (24) *West Virginia taxable income.* — The term “West  
100 Virginia taxable income” means the taxable income of a  
101 corporation as defined by the laws of the United States for  
102 federal income tax purposes, adjusted, as provided in  
103 section six of this article: *Provided*, That in the case of a  
104 corporation having income from business activity which is  
105 taxable without this state, its “West Virginia taxable  
106 income” shall be such portion of its taxable income as so  
107 defined and adjusted as is allocated or apportioned to this  
108 state under the provisions of section seven of this article.

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

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

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

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

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

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

26 (4) The deferral value of certain income that is not  
27 recognized for federal tax purposes, which value shall be an  
28 amount equal to a percentage of the amount allowed as a  
29 deduction in determining federal taxable income pursuant

30 to the accelerated cost recovery system under section 168 of  
31 the Internal Revenue Code for the federal taxable year, with  
32 the percentage of the federal deduction to be added as  
33 follows with respect to the following recovery property:  
34 three-year property — no modifications; five-year property  
35 — ten percent; ten-year property — fifteen percent; fifteen-  
36 year public utility property — twenty-five percent; and  
37 fifteen-year or eighteen-year real property — thirty-five  
38 percent: *Provided*, That this modification shall not apply to  
39 any person whose federal deduction is determined by the  
40 use of the straight line method, or to any taxable year  
41 beginning after the thirtieth day of June, one thousand nine  
42 hundred eighty-seven.

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

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

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

57 (3) The amount of dividends received, to the extent  
58 included in federal taxable income: *Provided*, That this  
59 modification shall not be made for taxable years beginning  
60 after the thirtieth day of June, one thousand nine hundred  
61 eighty-seven;

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

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

71 (6) The full amount of interest expense actually  
72 disallowed in determining federal taxable income which

73 was incurred or continued to purchase or carry obligations  
74 or securities of any state or of any political subdivision  
75 thereof.

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

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

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

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

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

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

112 (3) Notwithstanding any other provisions of this  
113 subsection or of section seven to the contrary, if the  
114 taxpayer's federal taxable income is subject to allocation  
115 and apportionment under section seven, the adjustments

116 prescribed in paragraphs (A) and (B), subdivision (1) of this  
117 subsection shall (instead of being made to the taxpayer's  
118 federal taxable income before allocation and  
119 apportionment thereof as provided in section seven) be  
120 made to the portion of the taxpayer's net income, computed  
121 without regard to such adjustments, allocated and  
122 apportioned to this state in accordance with the amounts of  
123 any allowances for depreciation and amortization of such  
124 water pollution control facilities and air pollution control  
125 facilities, as so defined, to the extent deductible in  
126 determining federal taxable income.

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

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

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

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

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

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

156 (2) The denominator of which is the average of the  
157 monthly beginning and ending account balances of the total  
158 assets of the taxpayer which are shown on Schedule L of

159 Federal Form 1120, which are filed by the taxpayer with the  
160 Internal Revenue Service.

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

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

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

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

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

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

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

31 (1) *Net rents and royalties.*

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

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

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

38 (ii) In their entirety if the taxpayer’s commercial



39 domicile is in this state and the taxpayer is not organized  
40 under the laws of or taxable in the state in which the  
41 property is utilized.

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

55 (2) *Capital gains.*

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

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

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

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

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

68 (D) Gains pursuant to section 631 (a) and (b) of the  
69 Internal Revenue Code of 1986, as amended, shall be  
70 considered business income for purposes of this article.

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

73 (4) *Patent and copyright royalties.*

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

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

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

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

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

97 (e) *Business activities partially within and partially*  
98 *without this state; apportionment of business income.* — All  
99 net income, after deducting those items specifically  
100 allocated under subsection (d), shall be apportioned to this  
101 state by multiplying such net income by a fraction, the  
102 numerator of which is the property factor plus the payroll  
103 factor plus two times the sales factor, and the denominator  
104 of which is four.

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

115 (2) *Value of property.* — Property owned by the  
116 taxpayer shall be valued at its original cost, adjusted by  
117 subsequent capital additions or improvements thereto and  
118 partial disposition thereof, by reason of sale, exchange,  
119 abandonment, etc.: *Provided,* That where records of  
120 original cost are unavailable or cannot be obtained without  
121 unreasonable expense, property shall be valued at original  
122 cost as determined under regulations of the tax  
123 commissioner. Property rented by the taxpayer from others  
124 shall be valued at eight times the annual rental rate. The

125 term “net annual rental rate” is the annual rental paid,  
126 directly or indirectly, by the taxpayer, or for its benefit, in  
127 money or other consideration for the use of property and  
128 includes:

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

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

141 (3) *Leasehold improvements.* — Leasehold  
142 improvements shall, for purposes of the property factor, be  
143 treated as property owned by the taxpayer regardless of  
144 whether the taxpayer is entitled to remove the  
145 improvements or the improvements revert to the lessor  
146 upon expiration of the lease. Leasehold improvements shall  
147 be included in the property factor at their original cost.

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

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

167 (6) *Compensation.* — The term “compensation” means

168 wages, salaries, commissions and any other form of  
169 remuneration paid to employees for personal services.  
170 Payments made to an independent contractor or to any  
171 other person not properly classifiable as an employee shall  
172 be excluded. Only amounts paid directly to employees are  
173 included in the payroll factor. Amounts considered as paid  
174 directly to employees include the value of board, rent,  
175 housing, lodging and other benefits or services furnished to  
176 employees by the taxpayer in return for personal services,  
177 provided such amounts constitute income to the recipient  
178 for federal income tax purposes.

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

180 (A) Any officer of a corporation; or

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

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

186 (A) The employee’s service is performed entirely within  
187 this state; or

188 (B) The employee’s service is performed both within and  
189 without this state, but the service performed without the  
190 state is incidental to the individual’s service within this  
191 state. The word “incidental” means any service which is  
192 temporary or transitory in nature, or which is rendered in  
193 connection with an isolated transaction; or

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

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

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

202 The term “base of operations” is the place of more or less  
203 permanent nature from which the employee starts his work  
204 and to which he customarily returns in order to receive  
205 instructions from the taxpayer or communications from his  
206 customers or other persons or to replenish stock or other  
207 materials, repair equipment, or perform any other  
208 functions necessary to the exercise of his trade or profession  
209 at some other point or points. The term “place from which  
210 the service is directed or controlled” refers to the place from

211 which the power to direct or control is exercised by the  
212 taxpayer.

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

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

226 (A) The property is delivered or shipped to a purchaser,  
227 other than the United States government, within this state  
228 regardless of the f.o.b. point or other conditions of the sale;  
229 or

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

232 (i) The purchaser is the United States government; or  
233 (ii) The taxpayer is not taxable in the state of the  
234 purchaser.

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

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

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

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

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

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

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

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

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

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

269 (h) Other methods of allocation and apportionment.

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

276 (A) Separate accounting;

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

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

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

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

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

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

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

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

**§11-24-23. 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.

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

*Bruce O. Williams*  
.....  
Chairman Senate Committee

*Lyle Settes*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

*Todd C. Velli*  
.....  
Clerk of the Senate

*Danald G. Hoyle*  
.....  
Clerk of the House of Delegates

*Sam Tomlinson*  
.....  
President of the Senate

*W. H. ...*  
.....  
Speaker House of Delegates

The within *disappeared* this the *30th*  
*March*  
day of ..... 1987.

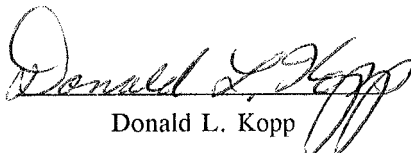
*Arch A. Prange Jr.*  
.....  
Governor





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.

A handwritten signature in cursive script that reads "Donald L. Kopp". The signature is written in dark ink and is positioned above the printed name.

Donald L. Kopp

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

PRESENTED TO THE  
GOVERNOR

Date 3/25/87

Time 4:19 p.m.

RECEIVED

1987 JUL 30 PM 1:50

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE