

No: 760

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 760

Originating in the
[Redacted] Committee on Finance



PASSED June 14, 1987
In Effect July 1, 1987 [Redacted]



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Senate Bill No. 760

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[Passed June 14, 1987; to take effect July 1, 1987.]

AN ACT to amend and reenact sections two, nine, nine-b, nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-e; to amend and reenact sections three, three-b, three-c and three-d, article fifteen-a of said chapter; and to amend section six, article twenty-four of said chapter, all relating to revision of state tax laws; refining the definitions of certain direct use items and the definition of "transmission" for consumers sales and service tax and use tax purposes; amending the consumers sales and service tax exemption applicable to certain service providers and persons engaged in the business of commercial production of an agriculture product; clarifying and specifying the intended broad exemption to be applicable to businesses subject to gross receipts taxes for their purchases used either directly or indirectly in business in lieu of any limited exemption based on purchases directly used in business; providing for use of exemption certificates being furnished to vendors by persons engaged in the commercial production of an agricultural product, engaged in a business dispensing taxable services, by persons relying on advertising exemptions, or by purchasers of propane for

poultry house heating purposes; authorizing tax commissioner to identify exempt purchases for which even furnishing of exemption certificates not required; requiring issuance by tax commissioner or direct pay permits, temporary or permanent with payment being made to the tax commissioner rather than vendors; providing for apportionment of gross proceeds in respect of sales of property or service partly eligible for exemption and partly for nonexempt use in order to determine tax liability; providing for existing purchase contracts, executed and binding before date of terminated exemption and payments to be subsequently made or prepaid for subsequent periods on and after such termination date to remain exempt, with only new contracts entered into on and after the specified date to be subject to tax; deleting obsolete language from certain exemption in use tax law and that use tax law fully complement consumers sales tax law; and specifying applicability of obligations or securities of the United States or authorized for issuance by specified entities by the United States Congress for adjustment purposes under corporation net income tax law.

Be it enacted by the Legislature of West Virginia:

That sections two, nine, nine-b, nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nine-e; that sections three, three-b, three-c and three-d, article fifteen-a of said chapter be amended and reenacted; and that section six, article twenty-four of said chapter be amended and reenacted, all to read as follows:

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; and

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 directly 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 resulting from the activities of contracting,
121 manufacturing, transportation, communication,
122 transmission or the production of natural resources;

123 (M) Pollution control or environmental quality or
124 protection activity directly relating to the activities of
125 contracting, manufacturing, transportation,
126 communication, transmission or the production of natural
127 resources and personnel, plant, product or community
128 safety or security activity directly relating to the activities
129 of contracting, manufacturing, transportation,
130 communication, transmission or the production of natural
131 resources; or

132 (N) Otherwise be used as an integral and essential part
133 of transportation, communication, transmission,

134 manufacturing production or production of natural
135 resources or contracting activity.

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

141 (A) Heating and illumination of office buildings;

142 (B) Janitorial or general cleaning activities;

143 (C) Personal comfort of personnel;

144 (D) Production planning, scheduling of work, or
145 inventory control;

146 (E) Marketing, general management, supervision,
147 finance, training, accounting and administration; or

148 (F) An activity or function incidental or convenient to
149 transportation, communication, transmission,
150 manufacturing production or production of natural
151 resources or contracting activity, rather than an integral
152 and essential part of such activities.

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

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

172 (q) "Transportation" shall mean the act or process of
173 conveying, as a commercial enterprise, passengers or goods
174 from one place or geographical location to another place or
175 geographical location.

176 (r) "Transmission" shall mean the act or process of
177 causing liquid, natural gas or electricity to pass or be
178 conveyed from one place or geographical location to
179 another place or geographical location through a pipeline
180 or other medium for commercial purposes.

181 (s) "Communication" shall mean all telephone, radio,
182 light, light wave, radio telephone, telegraph and other
183 communication or means of communication, whether used
184 for voice communication, computer data transmission or
185 other encoded symbolic information transfers and shall
186 include commercial broadcast radio, commercial broadcast
187 television and cable television.

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

§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 the 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 organizations under
32 the Internal Revenue Code by these organizations and shall
33 not 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 dispensing a service subject to tax under this
61 article and sales of tangible personal property and services
62 rendered for use or consumption in connection with the
63 commercial production of an agricultural product the
64 ultimate sale of which will be subject to the tax imposed by
65 this article or which would have been subject to tax under

66 this article but for the exemption for food provided in
67 section eleven of this article: *Provided*, That sales of
68 tangible personal property and services to be used or
69 consumed in the construction of or permanent
70 improvement to real property and sales of gasoline and
71 special fuel shall not be exempt;

72 (j) Sales of tangible personal property for the purpose of
73 resale in the form of tangible personal property: *Provided*,
74 That sales of gasoline and special fuel by distributors and
75 importers shall be taxable except when the sale is to
76 another distributor for resale;

77 (k) Sales of property or services to nationally chartered
78 fraternal or social organizations for the sole purpose of free
79 distribution in public welfare or relief work: *Provided*,
80 That sales of gasoline and special fuel shall be taxable;

81 (l) Sales and services, fire fighting or station house
82 equipment, including construction and automotive, made
83 to any volunteer fire department organized and
84 incorporated under the laws of the state of West Virginia:
85 *Provided*, That sales of gasoline and special fuel shall be
86 taxable;

87 (m) Sales of newspapers when delivered to consumers
88 by route carriers;

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

91 (o) Sales of radio and television broadcasting time, pre-
92 printed advertising circulars, and newspaper and outdoor
93 advertising space for the advertisement of goods or
94 services;

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

96 (q) Casual and occasional sales of property or services
97 not conducted in a repeated manner or in the ordinary
98 course of repetitive and successive transactions of like
99 character by corporations or organizations qualified under
100 section 501(c)(3) of the Internal Revenue Code of 1986, as
101 amended, or under section 501(c)(4) of the Internal Revenue
102 Code of 1986, as amended;

103 (r) Sales of property or services to a school which has
104 approval from the West Virginia board of regents to award
105 degrees, which has its principal campus in this state, and
106 which is exempt from federal and state income taxes under
107 section 501(c)(3) of the Internal Revenue Code of 1986, as

108 amended: *Provided*, That sales of gasoline and special fuel
109 shall be taxable;

110 (s) Sales of mobile homes to be utilized by purchasers as
111 their principal year-round residence and dwelling:

112 *Provided*, That these mobile homes shall be subject to tax at
113 the three percent rate;

114 (t) Sales of lottery tickets and materials by licensed
115 lottery sales agents and lottery retailers authorized by the
116 state lottery commission, under the provisions of article
117 twenty-two, chapter twenty-nine of this code;

118 (u) Leases of motor vehicles titled pursuant to the
119 provisions of article three, chapter seventeen-a of this code
120 to lessees for a period of thirty or more consecutive days.
121 This exemption shall apply to leases executed on or after the
122 first day of July, one thousand nine hundred eighty-seven,
123 and to payments under long-term leases executed before
124 such date, for months thereof beginning on or after such
125 date;

126 (v) Notwithstanding the provisions of subsection (g) of
127 this section or any provisions of this article to the contrary,
128 sales of property and services to persons subject to tax
129 under articles thirteen, thirteen-a or thirteen-b of this
130 chapter: *Provided*, That the exemption herein granted shall
131 apply both to property or services directly or not directly
132 used or consumed in businesses, the gross receipts from
133 which are subject to tax under such articles but shall not
134 apply to purchases of gasoline or special fuel;

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

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

150 (y) Sales of tickets for activities sponsored by

151 elementary and secondary schools located within this state;
152 and

153 (z) Sales of electronic data processing services and
154 related software: *Provided*, That for the purposes of this
155 subsection (z) “electric data processing services” means (1)
156 the processing of another’s data, including all processes
157 incident to processing of data such as keypunching,
158 keystroke verification, rearranging or sorting of previously
159 documented data for the purpose of data entry or automatic
160 processing, and changing the medium on which data is
161 sorted, whether these processes are done by the same person
162 or several persons; and (2) providing access to computer
163 equipment for the purpose of processing data or examining
164 or acquiring data stored in or accessible to such computer
165 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), (i), (j),
4 (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y) of said section
5 nine or the exemption of sales of property or services to
6 churches under subsection (e) of said section nine shall pay
7 to the vendor the tax imposed by this article and may
8 exercise or assert such exemption only in accordance with
9 subsection (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 required to remit the tax imposed
28 under this article or article fifteen-a of this chapter
29 pursuant to section five or subsection (b) of section nine-d
30 of this article or subsection (b) of section three-d of said
31 article fifteen-a, the taxpayer may credit the amount of
32 consumers sales and service tax overpayments against the
33 remittance of the tax imposed under said articles otherwise
34 due;

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

42 (3) If the taxpayer is subject to the tax imposed under
43 article twelve-a of this chapter, the taxpayer may credit the
44 amount of consumers sales and service tax overpayments
45 remaining after application of parts (1) and (2) of this
46 subsection against the taxpayer's annual or semiannual
47 remittance of the tax imposed under said article twelve-a
48 otherwise due; or

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

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

63 (6) If the taxpayer is subject to the tax imposed under
64 article twenty-four of this chapter, the taxpayer may credit
65 the amount of consumers sales and service tax
66 overpayments remaining after application of parts (1), (2),

67 (3), (4) and (5) of this subsection against the taxpayer's
68 installment of estimated tax imposed under said article
69 twenty-four and otherwise due under section seventeen,
70 article twenty-four of this chapter; or

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

79 (8) If the taxpayer is subject to the tax imposed under
80 article twenty-three of this chapter, the taxpayer may
81 credit the amount of consumers sales and service tax
82 overpayments remaining after application of parts (1), (2),
83 (3), (4), (5), (6) and (7) of this subsection against the
84 taxpayer's annual remittance of the tax imposed under said
85 article twenty-three and otherwise due; or

86 (9) If the taxpayer is required to deduct and withhold
87 tax under article twenty-one of this chapter, the taxpayer
88 may credit the amount of consumers sales and service tax
89 overpayments remaining after application of parts (1), (2),
90 (3), (4), (5), (6), (7) and (8) of this subsection against the
91 taxpayer's monthly remittance of the tax withheld under
92 said article twenty-one and otherwise due.

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

106 In addition to the powers of the tax commissioner set
107 forth in article ten of this chapter, as a further means of
108 obtaining the records, books, papers, documents, affidavits,

109 sales slips or invoices of a taxpayer or any other person and
110 ascertaining the amount of taxes paid or due under this
111 article or any report, form, document or affidavit required
112 under this article, the commissioner shall have the power to
113 examine witnesses under oath; and if any witness shall fail
114 or refuse at the request of the commissioner to grant access
115 to the books, records, papers, documents, affidavits, sales
116 slips or invoices requested by the commissioner, the
117 commissioner shall certify the facts and the names to the
118 circuit court of the county having jurisdiction over the
119 party and such court shall thereupon issue a subpoena
120 duces tecum to such party to appear before the
121 commissioner, at a place designated within the jurisdiction
122 of such court, on a day fixed.

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

133 (f) Any credit of consumers sales and service tax
134 overpayments against taxes under subsection (c) of this
135 section shall be taken within one year after the payment of
136 the said consumers sales and service tax by the consumer to
137 the vendor. Any such credit or claim of entitlement to such
138 credit made or asserted more than one year after the
139 payment of such tax by the consumer to the vendor shall be
140 null and void, and such consumers sales and service tax
141 overpayments shall be forfeited unless refunded under
142 subsection (b) of this section.

143 (g) Any assignment of the right or entitlement to a
144 refund or credit arising under this section shall be subject to
145 strict proof, and any assignee claiming a right or
146 entitlement to an assigned refund or credit shall submit an
147 affidavit in such form as the tax commissioner shall
148 prescribe signed by the assignor acknowledging the
149 assignment. The assignee shall attest to the assignment and
150 the terms thereof on his signed application filed under

151 subsection (d) of this section for refund or credit, and will be
 152 subject to the penalties provided under West Virginia law
 153 for perjury for any falsehood set forth therein and will be
 154 subject to the penalties set forth in article nine of this
 155 chapter for any violation thereof. Except as provided in this
 156 subsection (g), no payment of a refund arising under this
 157 section shall be made to any person other than the taxpayer
 158 making the original overpayment of consumers sales and
 159 service tax.

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

164 (i) Any claim for a refund of consumers sales and service
 165 tax overpayments or for a tax credit for consumers sales and
 166 service tax overpayments which is not timely filed or not
 167 filed in proper form or in accordance with the requirements
 168 of this section shall not be construed to constitute a moral
 169 obligation of the state of West Virginia for payment. No
 170 overpayment of consumers sales and service tax made
 171 under this section shall be subject to subsection (d), section
 172 seventeen, article ten of this chapter or paragraph (e)(1),
 173 section seventeen, article ten of this chapter.

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

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

1 Persons having a right or claim to any exemption set forth
 2 in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r),
 3 (s), (t), (u), (w), (x) and (y) of section nine of this article shall,
 4 in lieu of paying the tax imposed by this article, execute a
 5 certificate of exemption in such form as the tax
 6 commissioner may require, and such executed exemption
 7 certificate shall be delivered to the vendor in such manner
 8 as the tax commissioner may require: *Provided*, That the
 9 tax commissioner may identify exemptions for which
 10 exemption certificates are not required and as soon as
 11 practical may specify by regulation exemptions for which
 12 exemption certificates are not required.

§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article,

2 the tax commissioner shall, pursuant to rules and
3 regulations promulgated as soon as practical by the tax
4 commissioner in accordance with article three, chapter
5 twenty-nine-a of this code, authorize a person (as defined in
6 section two) that is a user, consumer, distributor or lessee to
7 which sales or leases of tangible personal property are made
8 or services provided, to pay any tax levied by this article or
9 article fifteen-a of this chapter directly to the tax
10 commissioner and waive the collection of the tax by that
11 person's vendor. No such authority shall be granted or
12 exercised except upon application to the tax commissioner
13 and after issuance by the tax commissioner of a direct pay
14 permit, except that a temporary permit may immediately
15 and provisionally be authorized by the tax commissioner in
16 respect of any interim or transitional period, with either
17 termination of such temporary permit thereafter or a
18 permanent permit to subsequently issue as promptly as
19 practicable, for purchases made from the vendor or vendors
20 identified or specified in a manner acceptable to and as
21 authorized by the tax commissioner. Upon issuance of such
22 direct pay permit, payment of the tax imposed or assertion
23 of the exemptions allowed by this article or article fifteen-a
24 of this chapter on sales and leases of tangible personal
25 property and sales of taxable services from such vendors
26 shall be made directly to the tax commissioner by the
27 permit holder.

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

43 (c) A permit issued pursuant to this section shall
44 continue to be valid until expiration of the business's

45 registration year under article twelve of this chapter. This
46 permit shall automatically be renewed when the business's
47 business registration certificate is issued for the next
48 succeeding fiscal year, unless the permit is surrendered by
49 the holder or canceled for cause by the tax commissioner.

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

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

**§11-15-9e. Apportionment of purchase price; existing
contracts protected.**

1 Whenever a purchaser will use acquired tangible
2 personal property, a service, or the results of a service for
3 both exempt and nonexempt purposes, the gross proceeds
4 of such sale paid to the vendor for such property or service
5 shall be apportioned between the exempt and nonexempt
6 uses, in a manner established as reasonable by the tax
7 commissioner, by regulations the tax commissioner may

8 prescribe, for the purpose of determining the tax liability in
9 respect of such purchase.

10 Contracts existing, executed and binding prior to the first
11 day of July, one thousand nine hundred eighty-seven for the
12 purchase of tangible personal property or services, by lease
13 or otherwise, and in connection with which an exemption
14 from tax was applicable to such purchase prior to such date
15 but terminated on and after the same; no new tax liability
16 shall arise in respect of payments to be subsequently made
17 under such a contract nor to payments prepaid thereunder
18 for any periods subsequent to such date, but only new
19 contracts entered into on and after the first day of July, one
20 thousand nine hundred eighty-seven, shall be liable for tax
21 under the provisions of this article or of article fifteen-a of
22 this chapter where such a prior applicable exemption has
23 been so terminated.

ARTICLE 15A. USE TAX.

§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 or services, the gross
19 receipts or the gross proceeds from the sale of which are
20 required to be included in the measure of the tax imposed by
21 article fifteen, chapter eleven of the code of West Virginia,
22 one thousand nine hundred thirty-one, as amended, and
23 upon which the tax imposed by said article fifteen has been
24 paid.

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

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

32 (b) The provisions of this section, as amended, shall
33 apply on and after the first day of July, one thousand nine
34 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), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w),
6 (x) and (y) of said section nine shall pay to the vendor the tax
7 imposed by this article and may exercise or assert such
8 exemption only in accordance with subsection (b) or
9 subsection (c) of this 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 required to remit the tax imposed
25 under this article or article fifteen of this chapter pursuant
26 to section five or subsection (b) of section nine-d of said
27 article fifteen or subsection (b) of section three-d of this
28 article, the taxpayer may credit the amount of use tax
29 overpayments against the remittance of the tax imposed
30 under said articles otherwise due;

31 (2) If the taxpayer is subject to the tax imposed under
32 article thirteen of this chapter, the taxpayer may credit the
33 amount of use tax overpayments remaining after
34 application of part (1) of this subsection against the
35 taxpayer's quarterly or monthly remittance of the tax
36 imposed under said article thirteen otherwise due; or

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

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

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

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

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

71 (8) If the taxpayer is subject to the tax imposed under
72 article twenty-three of this chapter, the taxpayer may

73 credit the amount of use tax overpayments remaining after
74 application of parts (1), (2), (3), (4), (5), (6) and (7) of this
75 subsection against the taxpayer's annual remittance of the
76 tax imposed under said article twenty-three and otherwise
77 due; or

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

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

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

115 the commissioner, at a place designated within the
116 jurisdiction of such court, on a day fixed.

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

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

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

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

154 (i) Any claim for a refund of use tax overpayments or a
155 tax credit for use tax overpayments which is not timely filed
156 or not filed in proper form or in accordance with the

157 requirements of this section shall not be construed to
 158 constitute a moral obligation of the state of West Virginia
 159 for payment. No overpayment of use tax made under this
 160 section shall be subject to subsection (d), section seventeen,
 161 article ten of this chapter, or paragraph (e)(1), section
 162 seventeen, article ten of this chapter.

163 (j) The provisions of this section become effective after
 164 the thirtieth day of June, one thousand nine hundred
 165 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), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y) of
 4 section nine of article fifteen of this chapter shall, in lieu of
 5 paying the tax imposed by this article, execute a certificate
 6 of 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: *Provided*, That the tax
 10 commissioner may identify exemptions for which
 11 exemption certificates are not required and as soon as
 12 practical may specify by regulation exemptions for which
 13 exemption certificates are not required.

§11-5A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article,
 2 the tax commissioner shall, pursuant to rules and
 3 regulations promulgated as soon as practical by the tax
 4 commissioner in accordance with article three, chapter
 5 twenty-nine-a of this code, authorize a person (as defined in
 6 section two of article fifteen) that is a user, consumer,
 7 distributor or lessee to which sales or leases of tangible
 8 personal property are made or services provided to pay any
 9 tax levied by this article or article fifteen of this chapter
 10 directly to the tax commissioner and waive the collection of
 11 the tax by that person's vendor. No such authority shall be
 12 granted or exercised except upon application to the tax
 13 commissioner and after issuance by the tax commissioner of
 14 a direct pay permit, except that a temporary permit may
 15 immediately and provisionally be authorized by the tax

16 commissioner in respect of any interim or transitional
17 period, with either termination of such temporary permit
18 thereafter or a permanent permit to subsequently issue as
19 promptly as practicable, for purchases made from the
20 vendor or vendors identified or specified in a manner
21 acceptable to and as authorized by the tax commissioner.
22 Upon issuance of such direct pay permit, payment of the tax
23 imposed or assertion of the exemptions allowed by this
24 article or article fifteen of this chapter on sales and leases of
25 tangible personal property and sales of taxable services
26 from such vendors shall be made directly to the tax
27 commissioner by the permit holder.

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

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

50 (d) Persons who hold a direct payment permit which has
51 not been canceled shall not be required to pay the tax to the
52 vendor as otherwise provided in this article or article fifteen
53 of this chapter. Such persons shall notify each vendor from
54 whom tangible personal property is purchased or leased or
55 from whom services are purchased of their direct payment
56 permit number and that the tax is being paid directly to the
57 tax commissioner. Upon receipt of such notice, such vendor
58 shall be absolved from all duties and liabilities imposed by

59 this chapter for the collection and remittance of the tax
60 with respect to sales, distributions, leases or storage of
61 tangible personal property and sales of services to such
62 permit holder. Vendors who make sales upon which the tax
63 is not collected by reason of the provisions of this section
64 shall maintain records in such manner that the amount
65 involved and identity of each such purchaser may be
66 ascertained.

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§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;

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

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

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

155 (2) The denominator of which is the average of the
156 monthly beginning and ending account balances of the total
157 assets of the taxpayer which are shown on Schedule L of
158 Federal Form 1120, which are filed by the taxpayer with the
159 Internal Revenue Service.

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

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

Lyfe Satter
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

Jedd C. Wick
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Dan Tomlin
.....
President of the Senate

W. H. Hall
.....
Speaker House of Delegates

The within *approved* this the *27th*
June
day of 1987.
Arch A. Shaugh
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 6/18/87

Time 4:27 p.m.

RECEIVED

1997 JUN 30 PM 2: 29

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE