

4511

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

HOUSE BILL No. 4511

(By Mr. Speaker, Mr. Chambers and
Delegate Swann)
(By request of the Executive)



Passed March 12, 1988

In Effect then Passage

ENROLLED
H. B. 4511

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)
[By request of the Executive]

[Passed March 12, 1988; in effect from passage.]

AN ACT to amend and reenact sections three, five, six, seven and seventeen, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-three by adding thereto two new sections, designated sections three-a and twenty-six, all relating generally to the business franchise tax; defining terms; updating references to federal internal revenue code; apportioning tax base; imposing tax; exempting certain businesses from tax; allowing certain credits against tax; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Meaning of terms; specific terms defined.

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

5 the context in which the term is used, or by specific
6 definition in this article.

7 (b) *Terms defined.*

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

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

17 (A) *Corporations.* — In the case of a corporation,
18 except an electing small business corporation, the
19 average of the beginning and ending year balances of
20 the sum of the following entries from Schedule L of
21 Federal Form 1120, as filed by the taxpayer with the
22 internal revenue service for the taxable year:

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

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

26 (iii) The amount of retained earnings, appropriated
27 and unappropriated;

28 (iv) Less the cost of treasury stock.

29 (B) *S Corporations.* — In the case of an electing small
30 business corporation, the average of the beginning and
31 ending year balances of the sum of the following entries
32 from Schedule L of Federal Form 1120S, as filed by the
33 taxpayer with the internal revenue service for the
34 taxable year:

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

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

38 (iii) Retained earnings, appropriated and
39 unappropriated;

40 (iv) The amount of shareholders’ undistributed taxa-

41 ble income;

42 (v) The amount of the accumulated adjustments
43 account;

44 (vi) The amount of the other adjustments account;

45 (vii) Less the cost of treasury stock.

46 (C) *Partnerships.* — In the case of a partnership, the
47 average of the beginning and ending year balances of
48 the value of partner's capital accounts from Schedule L
49 of Federal Form 1065, as filed by the taxpayer with the
50 internal revenue service for the taxable year.

51 (D) *Additional items in capital.* — The term "capital"
52 for purposes of this article shall include such additional
53 items from the accounts of the taxpayer as the tax
54 commissioner may by regulation prescribe, which fairly
55 represent the net equity of the taxpayer as defined in
56 accordance with generally accepted accounting
57 principles.

58 (E) *Allowance for certain government obligations and*
59 *obligations secured by residential property.* — As to both
60 corporations and partnerships, capital shall be multip-
61 lied by a fraction equal to one minus a fraction:

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

68 (I) Obligations and securities of the United States, or
69 of any agency, authority, commission or instrumentality
70 of the United States and any other corporation or entity
71 created under the authority of the United States
72 Congress for the purpose of implementing or furthering
73 an objective of national policy;

74 (II) Obligations of this state and any political subdi-
75 vision of this state;

76 (III) Investments or loans primarily secured by
77 mortgages, or deeds of trust, on residential property

78 located in this state and occupied by nontransients; and

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

83 (ii) The denominator of which is the average of the
84 beginning and ending year balances of the total assets
85 of the taxpayer as shown on Schedule L of the Federal
86 Form 1120, as filed by the taxpayer with the internal
87 revenue service or, in the case of partnerships, Schedule
88 L of Federal Form 1065, as filed by the taxpayer with
89 the internal revenue service.

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

94 (4) *Commissioner or tax commissioner.* — The terms
95 “commissioner” or “tax commissioner” are used inter-
96 changeably herein and mean the tax commissioner of
97 the state of West Virginia, or his delegate.

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

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

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

114 (8) *Doing business.* — The term “doing business”
115 means any activity of a corporation or partnership

116 which enjoys the benefits and protection of the govern-
117 ment and laws of this state, except the activity of
118 agriculture and farming, which shall mean the produc-
119 tion of food, fiber and woodland products (but not
120 timbering activity) by means of cultivation, tillage of the
121 soil and by the conduct of animal, livestock, dairy,
122 apiary, equine or poultry husbandry, horticulture, or
123 any other plant or animal production and all farm
124 practices related, usual or incidental thereto, including
125 the storage, packing, shipping and marketing, but not
126 including any manufacturing, milling or processing of
127 such products by persons other than the producer
128 thereof.

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

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

144 (10) *Federal Form 1120.* — The “Federal Form 1120”
145 means the annual federal income tax return of any
146 corporation made pursuant to the United States Internal
147 Revenue Code of 1986, as amended, or in successor
148 provisions of the laws of the United States, in respect
149 to the taxable income of a corporation, and filed with
150 the federal internal revenue service. In the case of a
151 corporation that elects to file a federal income tax
152 return as part of an affiliated group, but files as a
153 separate corporation under this article, then as to such
154 corporation Federal Form 1120 means its pro forma
155 Federal Form 1120.

156 (11) *Federal Form 1065*. — The term “Federal Form
157 1065” means the annual federal income tax return of a
158 partnership made pursuant to Section 6031 of the
159 United States Internal Revenue Code of 1986, as
160 amended, or renumbered, or in successor provisions of
161 the laws of the United States, in respect to the taxable
162 income of a partnership, and filed with the federal
163 internal revenue service.

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

168 (13) *Financial organization*. — The term “financial
169 organization” includes any bank, banking association,
170 trust company, industrial loan company, small loan
171 company or licensee, building and loan association,
172 savings and loan association, finance company, invest-
173 ment company, investment broker or dealer, and any
174 other similar business organization at least ninety
175 percent of the assets of which consist of intangible
176 personal property and at least ninety percent of the
177 gross receipts of which consist of dividends, interest and
178 other charges derived from the use of money or credit.

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

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

188 (16) *Parent and subsidiary corporations*. — A corpo-
189 ration which owns on average during the taxable year
190 more than fifty percent of the stock of all classes of
191 another corporation is defined to be the “parent
192 corporation” and the corporation which is so owned by
193 the parent is defined to be a “subsidiary corporation.”

194 (17) *Partnership and partner*. — The term “partner-

195 ship" includes a syndicate, group, pool, joint venture or
196 other unincorporated organization through or by means
197 of which any business, financial operation or venture is
198 carried on, and which is not a trust or estate, a
199 corporation, a sole proprietorship, or an unincorporated
200 organization which under Section 761 of the internal
201 revenue code and is not treated as a partnership for the
202 taxable year for federal income tax purposes. The term
203 "partner" includes a member in such a syndicate, group,
204 pool, joint venture or other unincorporated organization
205 which is a "partnership."

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

208 (19) *Pro forma return*. — The term "pro forma return"
209 when used in this article means the return which the
210 taxpayer would have filed with the internal revenue
211 service had it not elected to file federally as part of a
212 consolidated group.

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

216 (21) *State*. — The term "state" means a state of the
217 United States, the District of Columbia, the Common-
218 wealth of Puerto Rico, or any territory or possession of
219 the United States.

220 (22) *Stock*. — The term "stock" includes shares in a
221 corporation, association or joint-stock company. It shall
222 not include nonvoting stock which is limited and
223 preferred as to dividends, or treasury stock. "Stock
224 owned by a corporation" shall include stock owned
225 directly by such corporation and stock which is subject
226 to an option to acquire stock.

227 (23) *Taxable year*. — The term "taxable year" means
228 the calendar year, or the fiscal year ending during such
229 calendar year, upon the basis of which tax liability is
230 computed under this article. "Taxable year" means, in
231 case of a return made for a fractional part of a year
232 (short taxable year) under the provisions of this article,
233 or under regulations promulgated by the tax commis-

234 sioner, the period for which such return is made.

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

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

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

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

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

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

251 (28) *Treasury stock.* — The term “treasury stock”
252 means shares of a corporation which have been issued
253 and have been subsequently acquired by and belong to
254 such corporation, and have not been canceled or restored
255 to the status of authorized but unissued shares. Treasury
256 stock is deemed to be issued shares, but not outstanding
257 shares.

§11-23-3a. Specific terms defined.

1 Any term used in this article shall have the meaning
2 as when used in a comparable context in the laws of the
3 United States relating to federal income taxes, unless a
4 different meaning is clearly required by the context or
5 by definition of this article. Any reference in this article
6 to the laws of the United States, or to the internal
7 revenue code, or to the federal income tax law shall
8 mean the provisions of the laws of the United States as
9 related to the determination of income for federal
10 income tax purposes. All amendments made to the laws
11 of the United States prior to the first day of January,
12 one thousand nine hundred eighty-eight, shall be given
13 effect in determining the taxes imposed by this article

14 for the tax period beginning the first day of January,
15 one thousand nine hundred eighty-eight, and thereafter,
16 but no amendment to laws of the United States made
17 on or after the first day of January, one thousand nine
18 hundred eighty-eight, shall be given effect.

§11-23-5. Apportionment of tax base.

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

9 (b) *Property factor.* — The property factor is a
10 fraction, the numerator of which is the average value
11 of the taxpayer's real and tangible personal property
12 owned or rented and used by it in this state during the
13 taxable year, and the denominator of which is the
14 average value of all real and tangible personal property
15 owned or rented by the taxpayer and used by it during
16 the taxable year, which is reported on Schedule L of
17 Federal Form 1120 (or 1065 for partnerships), plus the
18 average value of all real and tangible personal property
19 leased and used by the taxpayer during the taxable
20 year.

21 (c) *Value of property.* — Property owned by the
22 taxpayer shall be valued at its original cost, adjusted by
23 subsequent capital additions or improvements thereto
24 and partial disposition thereof, by reason of sale,
25 exchange, abandonment, etc.: *Provided,* That where
26 records of original cost are unavailable or cannot be
27 obtained without unreasonable expense, property shall
28 be valued at original cost as determined under regula-
29 tions of the tax commissioner. Property rented by the
30 taxpayer from others shall be valued at eight times the
31 net annual rental rate. Net annual rental rate is the
32 annual rental paid, directly or indirectly, by the
33 taxpayer, or for its benefit, in money or other consid-
34 eration for the use of the property and includes:

35 (1) Any amount payable for the use of real or tangible
36 personal property, or any part thereof, whether desig-
37 nated as a fixed sum of money or as a percentage of
38 sales, profits or otherwise.

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

48 (d) *Movable property.* — The value of movable tang-
49 ible personal property used both within and without this
50 state shall be included in the numerator to the extent
51 of its utilization in this state. The extent of such
52 utilization shall be determined by multiplying the
53 original cost of such property by a fraction, the
54 numerator of which is the number of days of physical
55 location of the property in this state during the taxable
56 period, and the denominator of which is the number of
57 days of physical location of the property everywhere
58 during the taxable year. The number of days of physical
59 location of the property may be determined on a
60 statistical basis or by such other reasonable method
61 acceptable to the tax commissioner.

62 (e) *Leasehold improvements.* — Leasehold improve-
63 ments shall, for the purposes of the property factor, be
64 treated as property owned by the lesser regardless of
65 whether the lessee is entitled to remove the improve-
66 ments or the improvements revert to the lessor upon
67 expiration of the lease. Leasehold improvements shall be
68 included in the property factor at their original cost.

69 (f) *Average value of property.* — The average value of
70 property shall be determined by averaging the values
71 at the beginning and ending of the taxable year:
72 *Provided,* That the tax commissioner may require the
73 averaging of monthly values during the taxable year if
74 substantial fluctuations in the values of the property

75 exist during the taxable year, or where property is
76 acquired after the beginning of the taxable year, or is
77 disposed of, or whose rental contract ceases, before the
78 end of the taxable year.

79 (g) *Payroll factor*. — The payroll factor is a fraction,
80 the numerator of which is the total compensation paid
81 in this state during the taxable year by the taxpayer,
82 and the denominator of which is the total compensation
83 paid by the taxpayer during the taxable year as shown
84 on the taxpayer's federal income tax return as filed with
85 the internal revenue service, as reflected in the schedule
86 of wages and salaries and that portion of cost of goods
87 sold which reflects compensation, or as shown on a pro
88 forma return.

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

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

103 (1) Any officer of a corporation; or

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

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

109 (1) The employee's service is performed entirely
110 within the state;

111 (2) The employee's service is performed both within
112 and without the state, but the service performed without

113 the state is incidental to the individual's service within
114 the state. The word "incidental" means any service
115 which is temporary or transitory in nature, or which is
116 rendered in connection with an isolated transaction; or

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

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

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

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

136 (k) *Sales factor*. — The sales factor is a fraction, the
137 numerator of which is the gross receipts of the taxpayer
138 derived from transactions and activity in the regular
139 course of its trade or business in this state during the
140 taxable year, (business income) less returns and allo-
141 wances. The denominator of the fraction shall be the
142 total gross receipts derived by the taxpayer from
143 transactions and activity in the regular course of its
144 trade or business during the taxable year (business
145 income), and reflected in its gross income reported and
146 as appearing on the taxpayer's Federal Form 1120 or
147 1065, and consisting of those certain pertinent portions
148 of the (gross income) elements set forth: *Provided*, That
149 if either the numerator or the denominator includes
150 interest or dividends from obligations of the United
151 States government which are exempt from taxation by
152 this state, the amount of such interest and dividends, if

153 any, shall be subtracted from the numerator or denom-
154 inator in which it is included.

155 (l) *Allocation of sales of tangible personal property.* —

156 (1) Sales of tangible personal property are in this
157 state if:

158 (A) The property is received in this state by the
159 purchaser, other than the United States government,
160 regardless of the f.o.b. point or other conditions of the
161 sale. In the case of delivery by common carrier or other
162 means of transportation, the place at which such
163 property is ultimately received after all transportation
164 has been completed shall be considered as the place at
165 which such property is received by the purchaser.
166 Direct delivery in this state, other than for purposes of
167 transportation, to a person or firm designated by the
168 purchaser, constitutes delivery to the purchaser in this
169 state, and direct delivery outside this state to a person
170 or firm designated by the purchaser does not constitute
171 delivery to the purchaser in this state, regardless of
172 where title passes or other conditions of sale; or

173 (B) The property is shipped from an office, store,
174 warehouse, factory or other place of storage in this state
175 and the purchaser is the United States government.

176 (2) All other sales of tangible personal property
177 delivered or shipped to a purchaser within a state in
178 which the taxpayer is not taxed as defined in subsection
179 (b), section seven, article twenty-four of this chapter
180 shall be excluded from the denominator of the sales
181 factor.

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

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

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

190 (n) *Other methods of allocation.*

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

197 (A) Separate accounting;

198 (B) The exclusion of one of the factors;

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

202 (D) The employment of any other method to effectuate
203 an equitable allocation or apportionment of the taxpay-
204 er's tax base. Such petition shall be filed no later than
205 the due date of the annual return for the taxable year
206 for which the alternative method is requested, deter-
207 mined without regard to any extension of time for filing
208 such return, and the petition shall include a statement
209 of the petitioner's objections and of such alternative
210 method of allocation or apportionment as it believes to
211 be proper under the circumstances with such detail and
212 proof as the tax commissioner may require.

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

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

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

§11-23-6. Imposition of tax.

1 (a) *General.* — An annual business franchise tax is
2 hereby imposed on the privilege of doing business in this
3 state and in respect of the benefits and protections

4 conferred. Such tax shall be collected from every
5 corporation having its commercial domicile in this state,
6 every foreign or domestic corporation owning or leasing
7 real or tangible personal property located in this state
8 or doing business in this state and from every partner-
9 ship owning or leasing property located in this state or
10 doing business in this state, effective on and after the
11 first day of July, one thousand nine hundred eighty-
12 seven.

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

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

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

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

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

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

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

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

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

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

44 (h) Any corporation or partnership engaged in the
45 activity of agriculture and farming, as defined in
46 paragraph (8), subsection (b), section three of this
47 article: *Provided*, That if a corporation or partnership
48 is not exclusively engaged in such activity, its tax base
49 under this article shall be apportioned, in accordance
50 with regulations promulgated by the tax commissioner,
51 among its several activities and only that portion
52 attributable to the activity of agriculture and farming
53 shall be exempt from tax under this article.

54 (i) Any corporation or partnership licensed under
55 article twenty-three, chapter nineteen of this code, to
56 conduct horse or dog racing meetings or a pari-mutuel
57 system of wagering: *Provided*, That if such corporation
58 or partnership is not exclusively engaged in such

59 activity, its tax base under this article shall be appor-
60 tioned, in accordance with regulations promulgated by
61 the tax commissioner, among its several activities and
62 only that portion attributable to the activity of conduct-
63 ing a horse or dog racing meeting or a pari-mutuel
64 system of wagering shall be exempt from tax under this
65 article.

§11-23-17. Credits against tax.

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

12 (b) For taxable years ending after the thirtieth day
13 of June, one thousand nine hundred eighty-eight, a
14 credit shall be allowed against the tax imposed by this
15 article equal to the amount of franchise tax liability due
16 under this article, for the taxable year (determined
17 before application of other allowable credits) multiplied
18 by a fraction, the numerator of which is the gross
19 income of the business subject to tax under article
20 thirteen of this chapter and the denominator of which
21 is the total amount of gross receipts derived from or
22 attributable to all of taxpayer's activity in West
23 Virginia: *Provided*, That such credit shall be prorated
24 and only that amount attributable to months of the
25 taxable year beginning after June thirtieth, one thou-
26 sand nine hundred eighty-eight, shall be allowed as a
27 credit.

28 (c) A parent taxpayer who files a separate return
29 under this article shall be allowed a credit against such
30 taxpayer's liability for the tax under this article for the
31 amount of net taxes that would have been paid without
32 regard to the adjustment required by subparagraph (D),

33 paragraph (2), subsection (b), section three of this article
34 for the taxable year by a subsidiary corporation or
35 partnership: *Provided*, That the amount of credit
36 allowed shall not exceed the amount of tax that would
37 have been paid, without regard to such adjustment,
38 under this article by the subsidiary or partnership,
39 multiplied by the percentage of the parent's ownership
40 of the subsidiary corporation or partnership. In the case
41 of corporations, this percentage shall be equal to the
42 percentage of stock of all classes owned by the parent.
43 In no case shall any credit allowable by this section,
44 which is not used on an annual return, be carried
45 forward or back, but instead the same shall be forfeited.

46 (d) A credit shall be allowed against the tax imposed
47 by this article for the taxable year equal to the amount
48 of liability of the taxpayer for the taxable year for the
49 full amount of any tax imposed pursuant to article eight
50 of this chapter on the capital of the business, as
51 determined under sections fourteen and fourteen-a,
52 article three of this chapter.

§11-23-26. Effective date.

1 The provisions of this article as amended or added by
2 this act shall take effect on the first day of July, one
3 thousand nine hundred eighty-eight, and apply to all
4 taxable years ending after that date: *Provided*, That if
5 an effective date is expressly provided in such provision,
6 that specific effective date shall control in lieu of this
7 general effective date provision.

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

Bence O. Allison

Chairman Senate Committee

Barnes V. Kelly

Chairman House Committee

Originating in the House.

Takes effect from passage.

Joseph C. Willis

Clerk of the Senate

Donald J. Kopp

Clerk of the House of Delegates

Bar Tolson

President of the Senate

William W. Blanton

Speaker of the House of Delegates

The within *Approved* this the *29th*
March day of _____, 1988.

Archie A. Moore, Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/88

Time 3:56 p.m.

RECEIVED

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OFFICE OF THE ASSISTANT
SECRETARY OF STATE