WEST VIRGINIA LEGISLATURE

First Extraordinary Session, 1989

ENROLLED

Committee Substitute to

SENATE BILL NO.____________

(By Senator__Judy M. Bedinger, R___)

PASSED January 31, 1989

In Effect March 1, 1989
AN ACT to repeal sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a and eleven, article fifteen of said chapter; to amend and reenact sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code; to further amend said article thirteen by adding thereto a new section, designated section two-n; to amend and reenact section three, article thirteen-a of said chapter; to amend and reenact sections two, three and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto two new sections, designated sections eight-a and thirty-three; to amend and reenact section two, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto a new section, designated section twenty-nine; and to amend and reenact sections six and seventeen, article twenty-three of said chapter, all relating to the Fiscal Responsibility Act of 1989; amending and reenacting existing provisions of the
business and occupation tax, the severance tax, the consumers sales and service tax, the use tax and the business franchise tax; eliminating the expiration of the temporary one-cent increase in the consumers sales and service tax and the use tax, making the increase in these taxes permanent preserving the dedication of certain additional revenues therefrom for repayment of pneumoconiosis fund debt; defining terms used in the business and occupation tax; imposing the business and occupation tax, beginning the first day of March, one thousand nine hundred eighty-nine, upon the service of gas storage and prescribing the rate thereof and due dates of installment payments; setting forth an alternative method of calculating the business and occupation tax due from electric power and light companies and from generators of electric power; imposing such tax based on the number of kilowatt hours of electric power generated or sold within this state; specifying different rates of tax and exempting from tax kilowatt hours of electric power sold for certain purposes; requiring tax to be computed based on current law and under the alternative method, with liability for tax being the greater of the two; increasing the severance tax rates effective the first day of March, one thousand nine hundred eighty-nine; eliminating the exemption from the consumers sales and service tax and use tax for sales of property or services to persons in the business of contracting when such property or services are directly used in the activities of contracting; eliminating references to contracting in the definition of “directly used and consumed” for purposes of the consumers sales and service tax and the use tax; providing that property installed, fixed or incorporated into realty by a contractor is not subject to the consumers sales and service tax exemption for resale; removing the sales tax exemption for food intended for human consumption; providing an exemption mandated under Title forty-two, United States Code section one thousand seven hundred eighty-six; providing transition rules; making the effective date for all such changes to the consumers sales and service and use tax laws the first day of March, one thousand nine hundred eighty-nine;
eliminating the credit against the business franchise tax for the amount of tax that would be attributable to the portion of the business franchise tax base giving rise to a severance tax liability for taxable years ending after the twenty-eighth day of February, one thousand nine hundred eighty-nine, prorating the credit as to months before the first day of March, one thousand nine hundred eighty-nine; increasing the rate of the business franchise tax for taxable years beginning on or after specified date; permitting proration of tax when taxable year is less than twelve months; providing for a minimum tax; clarifying that charitable organizations and churches may continue to be exempt from sales and use tax on purchases of food for meals for which no charge is made; and providing that certain sales to persons engaged in contracting or subcontracting pursuant to a written contract with this state, a political subdivision thereof or a public corporation are exempt from the sales and use tax in certain instances.

Be it enacted by the Legislature of West Virginia:

That sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-a and eleven, article fifteen of said chapter eleven be repealed; that sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section two-n; that section three, article thirteen-a of said chapter be amended and reenacted; that sections two, three and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto two new sections, designated sections eight-a and thirty-three; that section two, article fifteen-a of said chapter be amended and reenacted; that said article fifteen-a be further amended by adding thereto a new section, designated section twenty-nine; and that sections six and seventeen, article twenty-three of said chapter be amended and reenacted, all to read as follows:
§11-13-1. Definitions.

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

(b) Terms defined.

(1) “Person” or the term “company,” herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(2) “Sale,” “sales” or “selling” includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

(3) “Taxpayer” means any person liable for any tax hereunder.

(4) “Gross income” means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on
account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

(5) "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

(6) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall include the rendering of gas storage service by any person for the gain or economic benefit of any person, including, but not limited to, the storage operator, whether or not incident to any other business activity.

(7) "Gas" means either natural gas unmixed, or any mixture of natural and artificial gas or any other gas.

(8) "Storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is or may be injected for the purpose of storage.

(9) "Gas storage service" means the injection of gas into a storage reservoir, the storage of gas for any period of time in a storage reservoir, or the withdrawal of gas from a storage reservoir. Such gas may be owned by the storage operator or any other person.

(10) "Gas storage operator" means any person who operates a storage reservoir or provides a storage service as defined herein, either as owner or lessee.

(11) "Month" or "tax month" means the calendar month.

(12) "Dekatherm" means the thermal energy unit equal to one million British thermal units (BTU's) or the equivalent of one thousand cubic feet of gas having a heating content of one thousand BTU's per cubic foot.
(13) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

§11-13-2. Imposition of privilege tax.

(a) Periods before July 1, 1987. — For taxable years or months thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, both inclusive, of this article and the application of the surtax rate against gross income as set forth in section two-k: Provided, That on the first day of July, one thousand nine hundred eighty-five, the taxes imposed by this section, at the rates set forth in sections two-b through two-m, both inclusive, of this article, and in effect on the first day of January, one thousand nine hundred eighty-five, exclusive of any surtaxes, shall be reduced by five percent for taxable months beginning on and after said first day of July: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-five, the rate of tax under section two-b of this article shall not be less than eight tenths of one percent: Provided further, That there shall be no such reduction of the rates set forth in section two-a or two-l of this article.

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

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

(d) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.
§11-13-2d. Public service or utility business.

(a) Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, the tax imposed by section two of this article shall be equal to the gross income of the business derived from such activity or activities multiplied by the respective rates as follows:

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

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

(3) Electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, and except as to income received by municipally owned plants producing or purchasing electricity and distributing same: Provided, That electric light and power companies which engage in the supplying of public service but which do not generate or produce in this state the electric power they supply shall be taxed on the gross income derived from sales of power which they do not generate in this state at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: Provided, however, That the sale of electric power under this section shall be taxed at the rate of two percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage of such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided further, That
the sale of electric power under this section shall be exempt from the tax imposed by this section and section two of this article if it is separately metered and consumed in an electrolytic process for the manufacture of chlorine in this state, or is separately metered and consumed in the manufacture of ferroalloy in this state, and the rate reduction herein provided to the taxpayer shall be passed on to the manufacturer of the chlorine or ferroalloy. As used in this section, the term “ferroalloy” means any of various alloys of iron and one or more other elements used as a raw material in the production of steel: And provided further, That the term does not include the final production of steel;

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

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

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

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

(c) Beginning the first day of March, one thousand nine hundred eighty-nine, electric light and power companies shall determine their liability for payment of tax under this section and sections two-n and two-o of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine, liability for tax under section two-n of this article is equal to or greater than the sum of the power company's liability for payment of tax under paragraph (3), subsection (a) of this section and section two-m of this article, then the company shall pay the tax due under section two-n of this article and not the tax due under paragraph (3), subsection (a) of this section and section two-m of this article. If tax liability under section two-n is less, then tax shall be paid under paragraph (3), subsection (a) of this section and section two-m of this article and the tax due under section two-n shall not be paid. The provisions of paragraph (3), subsection (a) of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

§11-13-2e. Business of gas storage; effective date.

1 (a) Rate of tax. — Upon every person engaging or continuing within this state in any gas storage business utilizing one or more gas storage reservoirs located within this state, the tax imposed by section two of this article shall be equal to five cents multiplied by the sum of (1) the number of dekatherms of gas injected into such a gas storage reservoir during a tax month and (2) the number of dekatherms of gas withdrawn from such a gas storage reservoir during a tax month, whether or not such gas is owned by, or is injected or withdrawn for, the storage operator or any other person. Fractional parts of dekatherms shall be included in the measure of tax as provided in regulations promulgated by the tax commissioner.

(b) Effective date. — The measure of tax under this
section shall include gas injected into, or withdrawn from, a gas storage reservoir after the twenty-eighth day of February, one thousand nine hundred eighty-nine.

(c) Administration; installment payments. — The tax due under this section shall be administered, collected and enforced as provided in this article and articles nine and ten of this chapter. The tax due under this section shall be remitted in periodic installments as provided in section four of this article, except that such periodic installment payments shall be remitted on or before the twentieth day of the month following the month or quarter in which the tax accrues.

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

(a) Upon every person engaging or continuing within this state in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year.

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

(c) Beginning the first day of March, one thousand nine hundred eighty-nine, every person taxable under this section shall determine their liability for payment of tax under this section and under paragraph (3), subsection (a), section two-d of this article and section two-n of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine such person's liability for payment of tax under this section and paragraph (3), subsection (a), section two-d of this article is less than the amount of such person's liability for payment of tax under section two-n of this article, then such person shall pay the tax due under section two-n and not the sum of the amount of tax due under this section and under paragraph (3), subsection (a), section two-d of this article. If the tax due under section two-n of this article is less, then the amount of tax due under this section and paragraph (3), subsection (a), section two-d of this article shall be paid. The provisions of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

§11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.

(a) Rate of tax. — Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by section two of this article shall be equal to:

(1) Two tenths of one cent times the kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer during the taxable year, except that this rate shall be five hundredths of one cent times the kilowatt hours of net
generation available for sale that was generated or
produced in this state by the taxpayer and sold to a
plant location of a customer engaged in manufacturing
activity if the contract demand at such plant location
exceeds two hundred thousand kilowatts per hour per
year or if the usage at such plant location exceeds two
hundred thousand kilowatts per hour in a year:  
Provided, That in order to encourage the development
of industry to improve the environment of this state,
the tax imposed by this section on any person
generating or producing electric power and an alterna-
tive form of energy at a facility located within this
state substantially from gob or other mine refuse shall
be equal to five hundredths of one cent times the
kilowatt hours of net generation or production avail-
able for sale. The measure of tax under this paragraph
shall be equal to the total kilowatt hours of net
generation available for sale that was generated or
produced in this state by the taxpayer after the
twenty-eighth day of February, one thousand nine
hundred eighty-nine, regardless of the place of sale or
use, or the fact that transmission may be made to
points outside this state.

(2) Fifteen hundredths of one cent times the kilowatt
hours of electricity sold to consumers in this state that
were not generated or produced in this state by the
taxpayer, except that the rate shall be five hundredths
of one cent times the kilowatt hours of electricity not
generated or produced in this state by the taxpayer
which is sold to a plant location in this state of a
customer engaged in manufacturing activity if the
contract demand at such plant location exceeds two
hundred thousand kilowatts per hour per year or if
the usage at such plant location exceeds two hundred
thousand kilowatts per hour in a year. The measure of
tax under this paragraph shall be equal to the total
kilowatt hours of electricity sold to consumers in this
state after the twenty-eighth day of February, one
thousand nine hundred eighty-nine, that were not
generated or produced in this state by the taxpayer, to
be determined by subtracting from the total kilowatt
hours of electricity sold to consumers in the state the
net kilowatt hours of electricity generated or produced in the state by the taxpayer during the taxable year.

(b) Exemptions. — The provisions of this section shall not apply to:

(1) Kilowatt hours of electricity generated and sold, or purchased and resold, by a municipally owned plant.

(2) Kilowatt hours of electric power that are separately metered and consumed in an electrolytic process for the manufacture of chlorine.

(3) Kilowatt hours of electric power that are separately metered and consumed in the manufacture of ferroalloy. As used in this paragraph, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel but shall not include electric power used in the production of steel.

(4) The full economic benefits provided to the taxpayer by paragraphs (2) and (3) of this subsection shall be passed on to the manufacturer of the chlorine or ferroalloy.

(c) Credit. — Any person taxable under paragraph (2), subsection (a) of this section shall be allowed a credit against the amount of tax due under that paragraph for any electric power generation taxes paid by the taxpayer with respect to such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under paragraph (2), subsection (a) of this section with respect to the sale of such power.

(d) Transition rule. — Beginning the first day of March, one thousand nine hundred eighty-nine, electric light and power companies shall determine their liability for payment of tax under this section and sections two-d and two-m of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine, liability for tax under section two-n of this article is equal to or
greater than the sum of the power company's liability
for payment of tax under paragraph (3), subsection (a),
section two-d and section two-m of this article, then
the company shall pay the tax due under section two-
n of this article and not the tax due under paragraph
(3), subsection (a) of section two-d and section two-m
of this article. If tax liability under section two-n is
less, then tax shall be paid under paragraph (3),
subsection (a), section two-d and section two-m of this
article and the tax due under section two-n shall not
be paid. The provisions of this subsection (d) shall
expire and become null and void for taxable years
beginning on or after the first day of January, one
thousand nine hundred ninety-eight.

ARTICLE 13A. SEVERANCE TAXES.

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

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

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

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

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

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

March 1, 1989 — and thereafter — five (5.0) percent.

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

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

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

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

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

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

July 1, 1992 — four (4.0) percent;

July 1, 1993 — four and fifty one hundredths (4.5) percent; and

July 1, 1994 — and thereafter — five (5.0) percent.

(3) On oil, on

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

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

March 1, 1989 — and thereafter — five (5.0) percent.

(4)(a) On natural gas, on

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

July 1, 1988 — six (6.0) percent;

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

July 1, 1990 — and thereafter — five (5.0) percent.
(4)(b) On natural gas produced from new wells drilled and placed in service on and after July 1, 1987, on July 1, 1987 — four (4.0) percent; and March 1, 1989 — and thereafter — five (5.0) percent. (5) On sand, gravel or other mineral product not quarried or mined, on July 1, 1987 — four and thirty-four one hundredths (4.34) percent; July 1, 1988 — four and two hundred seventy-two one thousandths (4.272) percent; and March 1, 1989 — and thereafter — five (5.0) percent. (6) On timber, on July 1, 1987 — two and five-tenths (2.5) percent; and March 1, 1989 — and thereafter — three and twenty-two hundredths (3.22) percent. (7) On other natural resources, on July 1, 1987 — two and eighty-six one hundredths (2.86) percent; July 1, 1988 — three and eighty-eight one thousandths (3.088) percent; July 1, 1989 — three and three hundred sixteen one thousandths (3.316) percent; July 1, 1990 — three and five hundred forty-four one thousandths (3.544) percent; July 1, 1991 — three and seven hundred seventy-two one thousandths (3.772) percent; July 1, 1992 — four (4.0) percent; July 1, 1993 — four and fifty one hundredths (4.5) percent; and July 1, 1994 — and thereafter — five (5.0) percent. (c) Tax in addition to other taxes. — The taxes imposed by this article shall apply to all persons
severing or processing (or both severing and processing) natural resources in this state and shall be in addition to all other taxes imposed by law.

(d) Statement of purpose; relationship to existing contracts. — It is the intent of the Legislature in enacting this article to continue the imposition of the tax upon exercising the privilege of engaging in or continuing within this state the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use, natural resource products, which was imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven, by such act.

The provisions of any contract entered into prior to the effective date of this act and relating to the allocation, reimbursement, payment or assessment of the tax imposed by section two-a, article thirteen of this chapter, formerly, shall apply with full force and effect to the tax imposed by this article; it being the intent of the Legislature that, for purposes of any such contractual provision, the tax imposed by this article shall be considered the same as the tax imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven.

ARTICLE 15. CONSUMERS SALES TAX.


For purposes of this article:

(a) “Persons” shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator.

(b) “Tax commissioner” shall mean the state tax commissioner.

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

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

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

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

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

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

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

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

(k) "Personal service" shall include those:
(1) Compensated by the payment of wages in the ordinary course of employment; and

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoeshining, manicuring and similar services.

(l) “Taxpayer” shall mean any person liable for the tax imposed by this article.

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

(n) (1) “Directly used or consumed” in the activities of manufacturing, transportation, transmission, communication or the production of natural resources shall mean used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

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

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources; (B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production, or production of natural resources;

(D) Measuring or verifying a change in property
directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(F) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

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

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

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

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

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

(L) Storage, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the
production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

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

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

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

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

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

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

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

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

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

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

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

(t) "Production of natural resources" shall mean the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.
§11-15-3. Amount of tax; allocation of tax and transfers.

(a) For the privilege of selling tangible personal property and of dispensing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article, and shall pay the amount of tax to the tax commissioner in accordance with the provisions of this article.

(b) Beginning on the first day of March, one thousand nine hundred eighty-nine, the general consumer sales and service tax imposed by this article shall be at the rate of six cents on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents on the dollar of sales.

(c) There shall be no tax on sales where the monetary consideration is five cents or less. The amount of the tax shall be computed as follows:

(1) On each sale, where the monetary consideration is from six cents to sixteen cents, both inclusive, one cent.

(2) On each sale, where the monetary consideration is from seventeen cents to thirty-three cents, both inclusive, two cents.

(3) On each sale, where the monetary consideration is from thirty-four cents to fifty cents, both inclusive, three cents.

(4) On each sale, where the monetary consideration is from fifty-one cents to sixty-seven cents, both inclusive, four cents.

(5) On each sale, where the monetary consideration is from sixty-eight cents to eighty-four cents, both inclusive, five cents.

(6) On each sale, where the monetary consideration is from eighty-five cents to one dollar, both inclusive, six cents.

(7) If the sale price is in excess of one dollar, six cents on each whole dollar of sale price, and upon any
fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional part of the dollar if less than seventeen cents; two cents on the fractional part of the dollar if in excess of sixteen cents but less than thirty-four cents; three cents on the fractional part of the dollar if in excess of thirty-three cents but less than fifty-one cents; four cents on the fractional part of the dollar if in excess of fifty cents but less than sixty-eight cents; five cents on the fractional part of the dollar if in excess of sixty-seven cents but less than eighty-five cents; and six cents on the fractional part of the dollar if in excess of eighty-four cents. For example, the tax on sales from one dollar and one cent to one dollar and sixteen cents, both inclusive, seven cents; on sales from one dollar and seventeen cents to one dollar and thirty-three cents, both inclusive, eight cents; on sales from one dollar and thirty-four cents to one dollar and sixty-seven cents, both inclusive, nine cents; on sales from one dollar and fifty-one cents to one dollar and eighty-four cents, both inclusive, ten cents; on sales from one dollar and sixty-eight cents to one dollar and eighty-five cents and on sales from one dollar and eighty-five cents to two dollars, both inclusive, twelve cents.

(d) Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though such sales are aggregated in the billing or payment therefor. Notwithstanding any other provision, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(e) Of the taxes collected under the provisions of this article, one sixth of such taxes collected for the period subsequent to the thirty-first day of May one thousand nine hundred eighty-eight prior to the first day of July, one thousand nine hundred eighty-nine, and not attributable to or resulting from the repeal of section eleven of this article or attributable to tax on purchases of gasoline and special fuel, shall be reasonably allocated, with allowance for refunds and net of reasonable costs of administration, to and
deposited by the tax commissioner in the special account created in the treasury by section eight-a, article four-b, chapter twenty-three of this code, not to exceed the amount sufficient for making timely repayment of the principal and interest under the first payment due, by the thirtieth day of June, one thousand nine hundred eighty-nine, in repayment for the moneys previously transferred from such pneumoconiosis fund.


(a) The provisions of this article shall not apply to contracting services. However, purchases by a contractor of tangible personal property or taxable services for use or consumption in the providing of a contracting service shall be taxable beginning the first day of March, one thousand nine hundred eighty-nine, except as otherwise provided in this article.

(b) Transition rules. — The exemption from payment of tax on purchases of tangible personal property or taxable services directly used or consumed in the activity of contracting, as defined in section two of this article, which expires as of the first day of March, one thousand nine hundred eighty-nine, shall nevertheless remain in effect with respect to:

(1) Tangible personal property or taxable services purchased by a contractor on or after said first day of March in fulfillment of a written contract for contracting, as defined in section two of this article, that was executed and legally binding on the parties thereto on or before the fifteenth day of February, one thousand nine hundred eighty-nine; or in fulfillment of a written contract entered into after the said fifteenth day of February pursuant to a written bid for contracting that was made on or before the said fifteenth day of February that was binding on the contractor, but only to the extent that the bid is subsequently incorporated into a written contract; or

(2) Tangible personal property or taxable services purchased by a contractor on or after the said first day of March pursuant to a written contract executed on
(3) Tangible personal property or taxable services purchased by a contractor for consumption or use in fulfillment of a written contract entered into before the first day of September, one thousand nine hundred eighty-nine, when such contract is for the construction of a new improvement to real property the construction or operation of which was approved by a federal or state regulatory body prior to the first day of February, one thousand nine hundred eighty-nine.

(c) Renewals and extensions. — A renewal of any contract shall constitute a new contract for purposes of this section, and the date of entry into a contract renewal by the parties, the date or dates of tender of consideration and the time of performance of any contractual obligations under a renewed contract shall be treated as the dates for determining application of this section to the renewed contract. Extensions of time granted or agreed upon by the parties to a contract for performance of the contract or for tender of consideration under the contract shall not be treated as contract renewals. Contracts to which such extensions apply shall be treated under these transition rules as if the original contractual provisions for performance and tender of consideration remain in effect.

(d) Definitions. — For purposes of this section:

(!) The term "contract" or "contracts" means written agreements reciting or setting forth a fixed price consideration or a consideration based upon cost plus a stated percentage or a stated monetary increment. This term shall not mean or include ongoing sales contracts, contracts whereby any element of the consideration or the property or services sold or to be rendered in performance of the contract are undefined, or determined, as to either nature or
quantity, subsequent to the making of the contract, or any open-ended contract.

(2) The term "contract renewal" or "renewal" means a covenant or agreement entered into or assumed by parties which have a current contractual relation or which have had a past contractual relation, whereby the parties agree to incur obligations beyond those which they were, or would have been, required, at the minimum, to carry out under their current or past contractual relation.


(a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

(b) Sales of textbooks required to be used in any of the schools of this state;

(c) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(d) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

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

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

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

(h) An isolated transaction in which any tangible
personal property is sold, transferred, offered for sale
or delivered by the owner thereof or by his representa-
tive for the owner’s account, such sale, transfer,
offer for sale or delivery not being made in the
ordinary course of repeated and successive
transactions of like class of transactions by such owner or on his
account by such representative;

(i) Sales of tangible personal property and services
rendered for use or consumption in connection with
the business of dispensing a service subject to tax
under this article and sales of tangible personal
property and services rendered for use or consumption
in connection with the commercial production of an
agricultural product the ultimate sale of which will be
subject to the tax imposed by this article or which
would have been subject to tax under this article:
Provided, That sales of tangible personal property and
services to be used or consumed in the construction of
or permanent improvement to real property and sales
of gasoline and special fuel shall not be exempt;

(j) Sales of tangible personal property to a person for
the purpose of resale in the form of tangible personal
property: Provided, That sales of gasoline and special
fuel by distributors and importers shall be taxable
except when the sale is to another distributor for
resale: Provided, however, That sales of building
materials or building supplies or other property to any
person engaging in the activity of contracting, as
defined in this article, which is to be installed in,
affixed to or incorporated by such person or his agent
into any real property, building or structure shall not
be exempt under this subsection, except that sales of
tangible personal property to a person engaging in the
activity of contracting pursuant to a written contract
with this state, or with a political subdivision thereof,
or with a public corporation created by the Legislature
or by another government entity pursuant to an act of
the Legislature, for a building or structure (or
improvement thereto) or other improvement to real
property that is or will be owned and used by the
governmental entity for a governmental or propri-
etary purpose, who incorporates such property in such
building, structure or improvement shall, with respect
to such tangible personal property, nevertheless be
deemed to be the vendor of such property to the
governmental entity and any person seeking to qualify
for and assert this exception must do so pursuant to
such legislative rules and regulations as the tax
commissioner may promulgate and upon such forms
as the tax commissioner may prescribe. A subcontrac-
tor who, pursuant to a written subcontract with a
prime contractor who qualifies for this exception,
provides equipment, or materials, and labor to such a
prime contractor shall be treated in the same manner
as the prime contractor is treated with respect to the
prime contract under this exception and the legislative
rules and regulations promulgated by the tax commissioner;

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

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

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

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

(o) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

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

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

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

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

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

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

(v) Notwithstanding the provisions of subsection (g)
of this section or any provisions of this article to the
contrary, sales of property and services to persons
subject to tax under article thirteen, thirteen-a or
thirteen-b of this chapter: Provided, That the exemp-
tion herein granted shall apply both to property or
services directly or not directly used or consumed in
the conduct of privileges which are subject to tax
under such articles but shall not apply to purchases of
gasoline or special fuel;

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

(x) Any sales of tangible personal property or
services purchased after the thirtieth day of Septem-
ber, one thousand nine hundred eighty-seven, and
lawfully paid for with food stamps pursuant to the
federal food stamp program codified in 7 United States
(y) Sales of tickets for activities sponsored by elementary and secondary schools located within this state; and

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

§11-15-33. Effective Date.

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

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property or
taxable services, to be collected and paid as hereinafter
provided, at the rate of six percent of the purchase
price of such property or taxable services, beginning
on the first day of March, one thousand nine hundred
eighty-nine, except that sales of gasoline and special
fuel shall remain taxable at five percent. "Taxable
services," for the purposes of this article, means
services of the nature that are subject to the tax
imposed by article fifteen of this chapter. In this
article, wherever the words "tangible personal prop-
erty" or "property" appear, the same shall include the
words "or taxable services," where the context so
requires.

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

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

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

(e) The provisions of this section, as amended, shall
apply on and after the first day of March, one thou-
sand nine hundred eighty-nine, except where another
internal specific effective date controls.
(f) Of the taxes collected under the provisions of this article, one sixth of such taxes collected for the period subsequent to the thirty-first day of May, one thousand nine hundred eighty-eight and prior to the first day of July, one thousand nine hundred eighty-nine, and not attributable to or resulting from the repeal of section eleven, article fifteen of this chapter or attributable to tax on gasoline and special fuel, shall be reasonably allocated, with allowances for refunds and net of reasonable costs of administration, to, and deposited by the tax commissioner in the special account created in the treasury by section eight-a, article four-b, chapter twenty-three of this code, not to exceed the amount sufficient for making timely repayment of the principal and interest under the first payment due, by the thirtieth day of June, one thousand nine hundred eighty-nine, in repayment for the moneys previously transferred from such pneumoconiosis fund.

§11-15A-29. Effective date.

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

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

1 (a) General. — An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect of the benefits and protections conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation owning or leasing real or tangible personal property located in this state or doing business in this state and from every partnership owning or leasing real or tangible personal property located in this state or doing business in this state,
(b) Amount of tax and rate; effective date.

(1) On and after the first day of July, one thousand nine hundred eighty-seven, the amount of tax shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: Provided, That when the taxpayer's first taxable year under this article is a short taxable year, the taxpayer's liability shall be prorated based upon the ratio which the number of months in which such short taxable year bears to twelve: Provided, however, That this subdivision (1) shall not apply to taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine.

(2) Taxable years after December 31, 1988. — For taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine, the amount of tax due under this article shall be the greater of fifty dollars or seventy-five one hundredths of one percent of the value of the tax base as determined under this article: Provided, That when the taxpayer's taxable year for federal income tax purposes is a short taxable year, the tax determined by application of the tax rate to the taxpayer's tax base shall be prorated based upon the ratio which the number of months in such short taxable year bears to twelve: Provided, however, That when the taxpayer's first taxable year under this article is less than twelve months, the taxpayer's liability shall be prorated based upon the ratio which the number of months taxpayer was doing business in this state bears to twelve but in no event shall the tax due be less than fifty dollars.

§11-23-17. Credits against tax; expiration of credits.

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

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

(c) A parent taxpayer who files a separate return
under this article shall be allowed a credit against such
taxpayer's liability for the tax under this article for
the amount of net taxes that would have been paid
without regard to the adjustment required by
subparagraph (D), paragraph (2), subsection (b),
section three of this article for the taxable year by a
subsidiary corporation or partnership: Provided, That
the amount of credit allowed shall not exceed the
amount of tax that would have been paid, without
regard to such adjustment, under this article by the
subsidiary or partnership, multiplied by the percent-
age of the parent's ownership of the subsidiary corpo-
ration or partnership. In the case of corporations, this
percentage shall be equal to the percentage of stock of
all classes owned by the parent. In no case shall any
credit allowable by this section, which is not used on
an annual return, be carried forward or back, but
instead the same shall be forfeited.

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

(e) *Expiration of credits.* — The credits authorized in subsection (a) of this section, shall expire and not be authorized or allowed for any taxable month beginning on or after the first day of March, one thousand nine hundred eighty-nine. For taxable years beginning before said first day of March and ending after such date, the annual credit heretofore allowed by subsection (a) of this section shall be prorated by the number of months in the taxable year and only that portion of the credit attributable to months ending prior to said first day of March shall be allowable under this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originated in the Senate.

To take effect March 1, 1989.

Fred C. West  
Clerk of the Senate

Donald L. Hoff  
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 7th day of January, 1989.  
Governor