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SENATE OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

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## ENROLLED

Committee Substitute for  
**SENATE BILL NO.** 173  
(Originating in the Committee  
~~By Senator~~ on Finance )

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**PASSED** March 9, **1991**  
**In Effect** from **Passage**

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 173**

(Originating in the Committee on Finance)

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[Passed March 9, 1991; in effect from passage.]

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AN ACT to amend and reenact sections one, two, six and seven, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections three-c and five-b; and to amend and reenact sections two and nine, article fifteen of said chapter, all relating to the creation of a credit against the West Virginia business franchise tax and the West Virginia corporation net income tax for qualified investment of two million dollars or more in a management information services facility when such qualified investment is purchased, or leased, and placed in service or use over a period of not more than three hundred sixty-five days; setting forth legislative findings and purpose; defining terms; prescribing amount of credit allowed, application of credit, investment period limitations subject to extension by subsequent legislative amendment; limiting time during which qualified investment for a management information services facility may be purchased and placed in service or use and for which credit will be available, to the period from the first day of April, one thousand

nine hundred ninety-one, to the thirty-first day of March, one thousand nine hundred ninety-three, inclusive; providing tax year time limitations for application of credit over a ten-year period; providing for forfeiture of unused credit; providing that no carryback of credit to prior years shall be allowed; providing tax liability percentage offset limitations; limiting the amount of annual credit which any taxpayer or controlled group may take in any taxable year to a maximum of one million dollars; requiring an application for credit be filed with the tax commissioner; providing a penalty for failure to file an application for credit with the tax commissioner; defining qualified investment for a management information services facility, with application of percentages of the cost of property purchased to be determined in accordance with useful life or applicable lease term thereof; prescribing the manner for determination of the cost of property purchased or leased for management information services facilities in the case of trade-ins, damaged, destroyed or stolen property, rental property, property purchased for multiple use self-constructed property, and providing specific exclusions for investment in certain properties; providing for forfeiture of unused tax credits; providing for redetermination of credit in the case of premature disposition or cessation of use of property; providing for transfer of eligible investment to successors; requiring disclosure of the names and addresses of persons receiving the credit and the amount thereof by a bracketed amount category; requiring a report to be made to the Legislature during the regular legislative session of one thousand nine hundred ninety-two by the governor's office of community and industrial development analyzing the performance of the management information services facility credit and identifying the taxpayers taking the credit; providing for a change in the form of business of taxpayers holding qualified investment property relating to credit; providing for transfer or sale of qualified investment property to successors and acquisition of the amount of credit that remains available for successors in business, and allocation of annual credit between the transferor and

the transferee in the year during which qualified investment property is transferred to a successor business; and creating a consumers sales and service tax exemption and use tax exemption for purchases directly used or consumed in operation of management information services facilities that qualifies for tax credit under section three-c, article thirteen-d of said chapter and defining terms.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION, FOR RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENTS AND MANAGEMENT INFORMATION SERVICES FACILITIES.**

**§11-13D-1. Legislative findings and purpose.**

1 The Legislature finds that the encouragement of the  
2 location of new industry in this state; the expansion,  
3 growth and revitalization of existing industrial facili-  
4 ties in this state; the conduct of research and develop-  
5 ment in this state, for purposes of expanding markets  
6 for sales and uses of this state's natural resources and  
7 industrial products, the construction of residential  
8 housing and the creation or expansion of management  
9 information services facilities are all in the public  
10 interest and promote the general welfare of the people  
11 of this state.

12 In order to encourage capital investment in this  
13 state and thereby increase employment and economic  
14 development, there is hereby provided a tax credit for  
15 industrial expansion and revitalization in this state, for  
16 certain research and development related expendi-

17 tures in this state, for certain housing and develop-  
18 ment related expenditures in this state and for the  
19 creation or expansion of certain management informa-  
20 tion services facilities in this state.

**§11-13D-2. Definitions.**

1 (a) Any term used in this article shall have the same  
2 meaning as when used in a comparable context in  
3 article thirteen of this chapter, unless a different  
4 meaning is clearly required by the context of its use  
5 or by definition in this article.

6 (b) For purpose of this article, the term:

7 (1) "Eligible investment" means that amount deter-  
8 mined under either section four of this article, for  
9 investment in a new or expanded or revitalized  
10 industrial facility, or under section five of this article,  
11 in the case of an eligible research and development  
12 project, under section five-a for a qualified housing  
13 development project, or under five-b for a manage-  
14 ment information services facility.

15 (2) Eligible taxpayer.

16 (A) "Eligible taxpayer" means an industrial tax-  
17 payer who purchases new property for the purpose of  
18 industrial expansion, or for the purpose of revitalizing  
19 an existing industrial facility in this state; or a  
20 taxpayer who purchases property or services, or both,  
21 for the purpose of conducting an eligible research and  
22 development project in this state or for the purpose of  
23 constructing a qualified housing development project  
24 in this state.

25 (B) An eligible taxpayer for purposes of the manage-  
26 ment information services facility credit means a  
27 taxpayer fulfilling the requirements of paragraph (C)  
28 or (D) of this subdivision which has purchased, or  
29 leased, and placed into service or use in a management  
30 information services facility, qualified investment, as  
31 defined under section five-b of this article, of two  
32 million dollars or more over a time period of not more  
33 than three hundred sixty-five consecutive days and  
34 which operates such management information services

35 facility, without regard to whether such taxpayer is an  
36 industrial taxpayer or engages in an industrial busi-  
37 ness or operates an industrial facility as herein  
38 defined.

39 (C) An eligible taxpayer for purposes of the manage-  
40 ment information services facility credit is a person or  
41 entity which had no operations and owned or leased  
42 no property in West Virginia during the five year  
43 period prior to the creation of the management  
44 information services facility in West Virginia, and  
45 which is not a successor in business to any person or  
46 entity which had operations or owned or leased  
47 property in West Virginia during the five year period  
48 prior to the creation of the management information  
49 services facility in West Virginia.

50 A person or entity shall not constitute an eligible  
51 taxpayer for purposes of the management information  
52 services facility credit if any related person (as defined  
53 in Section 267(b) of the Internal Revenue Code of 1986,  
54 as amended) had operations or owned or leased  
55 property in West Virginia during the five year period  
56 prior to the creation of the management information  
57 services facility in West Virginia or if any such related  
58 person is a successor in business to any person or  
59 entity which had operations or owned or leased  
60 property in West Virginia during the five year period  
61 prior to the creation of the management information  
62 services facility in West Virginia.

63 (D) Notwithstanding paragraph (C) of this subdivi-  
64 sion, a person, entity, successor in business which  
65 would otherwise not constitute an eligible taxpayer  
66 under paragraph (C) of this subdivision may neverthe-  
67 less constitute an eligible taxpayer for purposes of this  
68 management information services facility credit if  
69 such person, entity, successor places qualified invest-  
70 ment into service or use in West Virginia for the  
71 purpose of establishing in this state a management  
72 information services facility that is new to West  
73 Virginia and which services do not include any  
74 management information services previously con-  
75 ducted by such person, entity, successor, or a related

76 person (as defined in Section 267(b) of the Internal  
77 Revenue Code of 1986, as amended) in West Virginia,  
78 or if such person, entity or successor places qualified  
79 investment into service or use in West Virginia in a  
80 management information services facility for the  
81 purpose of consolidating or relocating significant  
82 existing national, regional or international manage-  
83 ment information services operations in West Virginia,  
84 and such consolidation or relocation results in the  
85 placement of at least two million dollars of qualified  
86 investment into service or use in West Virginia within  
87 the time periods described in paragraph (B) of this  
88 subdivision, and such consolidation or relocation  
89 results in the relocation of significant management  
90 information services operations into West Virginia  
91 which did not previously exist in West Virginia, and  
92 the taxpayer otherwise constitutes an eligible taxpayer  
93 under such paragraph (B). For purposes of this section,  
94 the term "regional" means an area including more  
95 than one state or portions of more than one state of  
96 the United States.

97 (3) "Eligible research and development project"  
98 means a research and development project engaged in  
99 or conducted within this state, by a person who is  
100 engaged in this state in the business of producing  
101 natural resources or in an industrial business when  
102 such research and development project is conducted  
103 for purposes relating to the technical, economic,  
104 financial, engineering or marketing aspects of expand-  
105 ing markets for, and increasing sales of, this state's  
106 natural resource products, or industrial products, or  
107 both.

108 (4) "Industrial business" means any privilege tax-  
109 able under section two-b or two-m, article thirteen of  
110 this chapter, and includes a manufacturing service  
111 taxable under section two-h of said article: *Provided*,  
112 That on and after the first day of July, one thousand  
113 nine hundred eighty-seven, the term "industrial  
114 business" shall mean the business of manufacturing,  
115 compounding or preparing tangible personal property  
116 for sale, profit or commercial use, the business of

117 generating electric power, and the business of provid-  
118 ing a manufacturing service, which were taxable,  
119 respectively, under sections two-b, two-m and two-h,  
120 article thirteen of this chapter, on the first day of  
121 January, one thousand nine hundred eighty-five.

122 (5) "Industrial facility" means any factory, mill,  
123 plant, refinery, warehouse, buildings or complex of  
124 buildings located within this state, including the land  
125 on which it is located, and all machinery, equipment  
126 and other real and tangible personal property located  
127 at or within such facility used in connection with the  
128 operation of such facility in an industrial business.

129 (6) "Industrial revitalization" means capital invest-  
130 ment in an industrial facility located in this state to  
131 replace or modernize buildings, equipment, machinery  
132 and other tangible personal property used in connec-  
133 tion with the operation of such facility in an industrial  
134 business of the taxpayer, including the acquisition of  
135 any real property necessary to the industrial  
136 revitalization.

137 (7) "Industrial expansion" means capital investment  
138 in a new or expanded industrial facility in this state.

139 (8) "Industrial taxpayer" means any person subject  
140 to business and occupation taxes under article thirteen  
141 of this chapter, exercising any privilege taxable under  
142 section two-b or two-m of said article thirteen, or  
143 providing a manufacturing service taxable under  
144 section two-h of said article thirteen: *Provided*, That  
145 on and after the first day of July, one thousand nine  
146 hundred eighty-seven, "industrial taxpayer" shall  
147 mean any person subject to tax under section two-m,  
148 article thirteen of this chapter; or any person subject  
149 to tax under article thirteen-a or twenty-three of this  
150 chapter engaging in any activity that was taxable  
151 under section two-b, article thirteen of this chapter, on  
152 the first day of January, one thousand nine hundred  
153 eighty-five; or any person taxable under article  
154 twenty-three of this chapter providing a manufactur-  
155 ing service that was taxable under section two-h,  
156 article thirteen of this chapter on the first day of



157 January, one thousand nine hundred eighty-five.

158 (9) "Management information services facility"  
159 means a building, or any part thereof, or a complex of  
160 buildings, or any part thereof, including the machin-  
161 ery and equipment located therein, that is exclusively  
162 dedicated to providing management information servi-  
163 ces to the owner or operator thereof or to another  
164 person.

165 (10) "Management information services" means, and  
166 is limited to, data processing, data storage, data  
167 recovery and backup, programming recovery and  
168 backup, telecommunications, computation and com-  
169 puter processing, computer programming, electronic  
170 information, and data management activities, or any  
171 combination of such activities, when such activity, or  
172 activities, is not subject to regulation by the West  
173 Virginia public service commission and such activity,  
174 or activities, is for the purpose of managing, planning  
175 for, organizing or operating, any industrial or commer-  
176 cial business, or any enterprise, facility or facilities of  
177 an industrial or commercial business, whether such  
178 industrial or commercial business or enterprise,  
179 facility or facilities of an industrial or commercial  
180 business is located within or without this state and  
181 without regard to whether such industrial or commer-  
182 cial business, or enterprise, facility or facilities of an  
183 industrial or commercial business is owned by the  
184 provider of the management information services or  
185 by a "related person", as defined in Section 267(b) of  
186 the Internal Revenue Code of 1986, as amended.

187 (11) "Manufacturing service" means a privilege that  
188 would be taxable under section two-b, article thirteen  
189 of this chapter, if title to the raw materials used in the  
190 manufacturing process was vested in the taxpayer  
191 exercising the privilege taxable under section two-h of  
192 said article thirteen.

193 (12) Subject to subdivision (15) below, "property  
194 purchased for an eligible research and development  
195 project" means real property, and improvements  
196 thereto, and tangible personal property, but only if

197 such real or personal property is constructed or  
198 purchased on or after the first day of July, one  
199 thousand nine hundred eighty-five, for use as a  
200 component part of an eligible research and develop-  
201 ment project which is located within this state on or  
202 after the first day of July, one thousand nine hundred  
203 eighty-five. This term includes only tangible personal  
204 property with respect to which depreciation or amor-  
205 tization, in lieu of depreciation, is allowable in deter-  
206 mining the personal income tax or corporation net  
207 income tax liability of the purchaser under article  
208 twenty-one or twenty-four of this chapter. Property  
209 acquired by written lease for a term of ten years or  
210 longer, if used as a component part of an eligible  
211 research and development project, shall be included  
212 within this definition.

213 (13) Subject to subdivision (15) below, "property  
214 purchased for industrial expansion" means real prop-  
215 erty, and improvements thereto, and tangible personal  
216 property, but only if such property was constructed, or  
217 purchased, on or after the first day of July, one  
218 thousand nine hundred sixty-nine, for use as a compo-  
219 nent part of a new or expanded industrial facility as  
220 defined in subdivision (5) of this subsection located  
221 within this state. This term includes only tangible  
222 personal property with respect to which depreciation,  
223 or amortization in lieu of depreciation, is allowable in  
224 determining the personal income tax or corporation  
225 net income tax liability of the industrial taxpayer  
226 under articles twenty-one or twenty-four of this  
227 chapter, and has a useful life, at the time such  
228 property is placed in service or use in this state, of  
229 four years or more. Property acquired by written  
230 lease, for a primary term of ten years or longer, if  
231 used as a component part of a new or expanded  
232 industrial facility, shall be included within this  
233 definition.

234 (14) Subject to subdivision (15) below, "property  
235 purchased for industrial revitalization" means real  
236 property, and improvements thereto, and new tangible  
237 personal property, but only if such property was

238 constructed, or purchased, on or after the first day of  
239 July, one thousand nine hundred eighty-one, for use  
240 as a component part of an ongoing industrial facility as  
241 defined in subdivision (5) of this subsection located  
242 within this state. This term includes only tangible  
243 personal property with respect to which depreciation  
244 is allowable in determining the personal income tax or  
245 corporation net income tax liability of the industrial  
246 taxpayer under article twenty-one or twenty-four of  
247 this chapter, and has a useful life at the time the  
248 property is placed in service or use in this state of four  
249 years or more. Property acquired by written lease for  
250 a primary term of ten years or longer, if used as a  
251 component part of an industrial revitalization, shall be  
252 included within this definition.

253 (15) "Property purchased for industrial expansion",  
254 "property purchased for industrial revitalization",  
255 "property purchased for an eligible research and  
256 development project", "property purchased for a  
257 qualified housing development project" and "property  
258 purchased or leased for a management information  
259 services facility" shall not include:

260 (A) Repair costs including materials used in the  
261 repair, unless for federal income tax purposes, the cost  
262 of the repair must be capitalized and not expensed;

263 (B) Motor vehicles licensed by the department of  
264 motor vehicles;

265 (C) Airplanes;

266 (D) Off-premise transportation equipment;

267 (E) Property which is primarily used outside this  
268 state; and

269 (F) Property which is acquired incident to the  
270 purchase of the stock or assets of an industrial tax-  
271 payer, which property was or had been used by the  
272 seller in his industrial business in this state, or which  
273 property was previously designated "property pur-  
274 chased for industrial expansion", or "property pur-  
275 chased for industrial revitalization", or "property  
276 purchased for an eligible research and development

277 project", or "property purchased for a qualified  
 278 housing development project", and used to qualify for  
 279 business and occupation tax credit for industrial  
 280 expansion or revitalization, or for an eligible research  
 281 and development project, or for a qualified housing  
 282 development project, or property which was subject to  
 283 or gave rise to the management information services  
 284 facility credit in the hands of the transferor, except  
 285 that successors in business shall have successor credit  
 286 available pursuant to section seven of this article.

287 (16) Subject to subdivision (15) above, property  
 288 purchased for a qualified housing development project  
 289 means real property, and improvements thereto, and  
 290 tangible personal property incorporated into real  
 291 property, whether or not attached thereto, but only if  
 292 such real or tangible personal property was con-  
 293 structed, or purchased, on or after the first day of  
 294 July, one thousand nine hundred eighty-six, for use as  
 295 a component part of a housing development project, as  
 296 defined in section five-a of this article, located within  
 297 this state.

298 (17) Subject to subdivision (15) above, "property  
 299 purchased or leased for a management information  
 300 services facility" means tangible personal property  
 301 purchased from a West Virginia vendor in West  
 302 Virginia or leased through or from a West Virginia  
 303 vendor for a primary lease term of three years or  
 304 more. For purposes of this section the term "tangible  
 305 personal property" shall include prewritten or  
 306 "canned" computer software, "custom" software and  
 307 computer programming services which result in the  
 308 production of custom software: *Provided*, That the  
 309 term "property purchased or leased for a management  
 310 information services facility" shall not include:

311 (A) Land or building or any part thereof whether  
 312 leased or purchased;

313 (B) Natural resources in place;

314 (C) Property, the cost or consideration for which  
 315 cannot be quantified with any reasonable degree of  
 316 accuracy at the time such property is placed in service

317 or use;

318 (D) Property purchased or leased or placed in  
319 service or use prior to the first day of April, one  
320 thousand nine hundred ninety-one or property pur-  
321 chased or leased or placed in service or use after the  
322 thirty-first day of March, one thousand nine hundred  
323 ninety-three; or

324 (E) Property purchased for use in a management  
325 information services facility when such property is not  
326 purchased for the purpose of either:

327 (i) Expanding an existing management information  
328 services facility in West Virginia pursuant to a reloca-  
329 tion or consolidation of significant national, regional or  
330 international management information services opera-  
331 tion to West Virginia; or

332 (ii) Establishing in this state a management informa-  
333 tion services facility that is new to West Virginia.

334 (18) Property shall be deemed to have been pur-  
335 chased prior to a specified date only if:

336 (A) The physical construction, reconstruction or  
337 erection of the property was begun prior to the  
338 specified date, or such property was constructed,  
339 reconstructed, erected or acquired pursuant to a  
340 written contract as existing and binding on the tax-  
341 payer prior to the specified date;

342 (B) The machinery or equipment was owned by the  
343 taxpayer prior to the specified date or was acquired by  
344 the taxpayer pursuant to a binding purchase contract  
345 which was in effect prior to such date; or

346 (C) In the case of leased property, there was a  
347 binding written lease or contract to lease identifiable  
348 property in effect prior to the specified date.

349 (19) "Taxpayer" means any person taxable under  
350 article thirteen of this chapter: *Provided*, That on and  
351 after the first day of July, one thousand nine hundred  
352 eighty-seven, "taxpayer" shall mean any person  
353 taxable under article thirteen, thirteen-a or twenty-  
354 three of this chapter.

**§11-13D-3c. Amount of credit allowed and application of credit for qualified investment in a management information services facility.**

1 (a) *Credit allowed.* — There shall be allowed to  
2 eligible taxpayers a credit against the taxes imposed by  
3 articles twenty-three and twenty-four of this chapter  
4 for qualified investment in a management information  
5 services facility. The amount of credit shall be deter-  
6 mined as hereinafter provided in this section.

7 (b) *Investment period limitations subject to exten-*  
8 *sion upon legislative amendment.* — It is the finding of  
9 the Legislature that certain tax credits heretofore  
10 enacted have not effectively fulfilled the intended  
11 legislative purpose of increasing employment and  
12 economic growth and development in this state.  
13 Therefore, the time period over which qualified  
14 investment property may be purchased or leased and  
15 placed in service or use by eligible taxpayers at a  
16 management information services facility is expressly  
17 limited, for purposes of this credit, to two years under  
18 paragraph (C), subdivision (17), subsection (b), section  
19 two of this article, subsection (c) of this section, and  
20 paragraph (B), subdivision (6), subsection (c), section  
21 five-b of this article. If the Legislature subsequently  
22 finds that this credit for a management information  
23 services facility effectively fulfills the legislative  
24 purpose for which it was enacted, the Legislature may,  
25 in its discretion, extend, by statutory amendment, the  
26 time period over which qualified investment may be  
27 purchased, or leased, and placed in service or use.

28 (c) *Credit amount for qualified investment pur-*  
29 *chased and placed in service or use in a management*  
30 *information services facility after the thirty-first day*  
31 *of March, one thousand nine hundred ninety-one and*  
32 *prior to the first day of April, one thousand nine*  
33 *hundred ninety-three.* — For property purchased or  
34 leased by an eligible taxpayer and placed in service or  
35 use after the thirty-first day of March, one thousand  
36 nine hundred ninety-one, and prior to the first day of  
37 April, one thousand nine hundred ninety-three, for  
38 use as a component part of a management information

39 services facility, the amount of allowable credit shall  
40 be equal to one hundred percent of the qualified  
41 investment, as determined under section five-b of this  
42 article, and shall reduce the business franchise tax  
43 under article twenty-three of this chapter and the  
44 corporation net income tax under article twenty-four  
45 of this chapter, subject to the following conditions and  
46 limitations:

47 (1) *Tax year time limitations for application of*  
48 *credit, credit forfeiture.* —

49 (A) The amount of this credit allowable shall be  
50 applied over a time period of up to ten tax years.

51 (B) This credit shall first be applied against the tax  
52 liabilities in the manner specified in subdivision (2) of  
53 this subsection (c) beginning with the tax year during  
54 which the qualified investment was first placed in  
55 service or use in this state by the eligible taxpayer.

56 (C) Any amount of this credit remaining after  
57 application of this credit against tax as specified in  
58 paragraph (B) of this subdivision (1) shall then be  
59 applied against the tax liabilities in the manner  
60 specified in subdivision (2) of this subsection (c) for the  
61 tax year immediately succeeding the tax year during  
62 which the qualified investment was first placed in  
63 service or use in this state and for each succeeding tax  
64 year thereafter up through the ninth tax year subse-  
65 quent to the first tax year in which the qualified  
66 investment property was first placed in service or use.

67 (D) Any amount of this credit remaining after  
68 application of this credit against tax as specified in  
69 paragraph (B) and then paragraph (C) of this subdivi-  
70 sion shall be forfeited and shall not carry forward to  
71 any subsequent tax year.

72 (E) No carryback of credit to a prior tax year shall  
73 be allowed.

74 (2) *Tax liability percentage offset limitations.* —

75 (A) This credit for qualified investment in a man-  
76 agement information services facility shall first be

77 applied to reduce the annual West Virginia business  
78 franchise tax liability imposed under article twenty-  
79 three of this chapter for the tax year by an amount  
80 such that this credit, in combined application with all  
81 other applicable credits allowable under articles  
82 thirteen-c, thirteen-d and thirteen-e of this chapter  
83 and under chapter five-e of this code and all other tax  
84 credits provided in this code, shall not reduce the  
85 annual business franchise tax liability for such tax  
86 year below fifty percent of the amount of the annual  
87 tax liability which would otherwise be imposed for  
88 such tax year in the absence of this credit and all  
89 credits against such tax, except the credits set forth in  
90 section seventeen, article twenty-three of this chapter.

91 (B) After application of this credit against business  
92 franchise tax as provided in paragraph (A) of this  
93 subdivision (2), remaining credit for qualified invest-  
94 ment in a management information services facility, if  
95 any, shall then be applied to reduce the annual West  
96 Virginia corporation net income tax liability imposed  
97 under article twenty-four of this chapter for the tax  
98 year by an amount such that this credit in combined  
99 application with all other applicable credits allowable  
100 under articles thirteen-c, thirteen-d, thirteen-f and  
101 thirteen-g of this chapter and under sections ten,  
102 eleven, eleven-a, twelve, twenty-two and twenty-  
103 three-a, article twenty-four of this chapter and under  
104 chapters five-e and eighteen-b of this code and all  
105 other tax credits provided in this code, shall not  
106 reduce the annual corporation net income tax liability  
107 for such tax year below fifty percent of the amount of  
108 the annual tax liability which would otherwise be  
109 imposed for such tax year in the absence of this credit  
110 and all other credits against tax, except the credits set  
111 forth in sections nine and nine-a, article twenty-four  
112 of this chapter.

113 (C) After application of this credit against business  
114 franchise tax under paragraph (A) of this subdivision  
115 (2), and then against corporation net income tax under  
116 paragraph (B) of this subdivision (2); remaining credit  
117 for qualified investment in a management information



118 services facility, if any, shall then be applied to further  
119 reduce the annual West Virginia business franchise  
120 tax liability imposed under article twenty-three of this  
121 chapter for the tax year by an amount such that this  
122 credit shall not reduce the annual business franchise  
123 tax liability for such tax year below ten percent of the  
124 amount of the annual tax liability which would  
125 otherwise be imposed for such tax year in the absence  
126 of this credit and all other credits against such tax,  
127 except the credits set forth in section seventeen,  
128 article twenty-three of this chapter.

129 (D) After application of this credit against business  
130 franchise tax under paragraph (A) of this subdivision  
131 (2) and then against corporation net income tax under  
132 paragraph (B) of this subdivision (2), and then against  
133 business franchise tax under paragraph (C) of this  
134 subdivision (2); remaining credit for qualified invest-  
135 ment in a management information services facility, if  
136 any, shall then be applied to further reduce the annual  
137 West Virginia corporation net income tax liability  
138 imposed under article twenty-four of this chapter for  
139 the tax year by an amount such that this credit shall  
140 not reduce the annual corporation net income tax  
141 liability for such tax year below ten percent of the  
142 amount of the annual tax liability which would  
143 otherwise be imposed for such tax year in the absence  
144 of this credit and all other credits against such tax,  
145 except the credits set forth in sections nine and nine-  
146 a, article twenty-four of this chapter.

147 (d) *Maximum annual credit allowance.* — (1) Not-  
148 withstanding any other provision of this section, no  
149 taxpayer may take or apply more than one million  
150 dollars of this credit against all taxes, in the aggregate,  
151 against which this credit may apply in any taxable  
152 year, and no related person or persons as defined in  
153 Section 267(b) of the Internal Revenue Code of 1986, as  
154 amended, may, in the aggregate, take or apply more  
155 than one million dollars of this credit against all taxes,  
156 in the aggregate, against which this credit may apply  
157 in any taxable year.

158 (2) Notwithstanding any other provision of this

159 section, the total amount of credit certified under this  
160 subsection (e) for all taxpayers shall not exceed five  
161 million dollars per year. The tax commissioner shall  
162 allocate this credit to eligible taxpayers in the order  
163 that such taxpayers are certified under subsection (e)  
164 of this section: *Provided*, That no taxpayer or any  
165 related person to such taxpayer (as amended in section  
166 267(b) of the Internal Revenue Code of 1986), as  
167 amended, shall be allocated more than five million  
168 dollars.

169 (e) *Certification of credit required.* —

170 (1) *Application required.* — No credit shall be  
171 allowed or applied under this section for any invest-  
172 ment in any management information services facility  
173 until the person asserting a claim for the allowance of  
174 credit under this article makes written application to  
175 the tax commissioner for allowance of credit as  
176 provided in this section and receives written certifica-  
177 tion of its claim from the tax commissioner. An  
178 application for credit shall be filed, in such form as the  
179 tax commissioner shall prescribe, prior to the first date  
180 when qualified investment property is first placed in  
181 service or use, and whether such property will be  
182 placed in service during the same tax year or over a  
183 period of two or more successive tax years. All  
184 information required by such form shall be provided.  
185 No credit shall be taken by a taxpayer applicant or  
186 prospective applicant pursuant to this section and the  
187 exemption from tax set forth under subsection (nn),  
188 section nine, article fifteen of this chapter shall not be  
189 available to a taxpayer applicant or prospective appli-  
190 cant until certification has been issued by the tax  
191 commissioner.

192 (2) *Failure to file.* — The failure to timely apply for  
193 certification under this subsection (e) shall result in  
194 the forfeiture of the credit otherwise allowable under  
195 this section.

196 (f) *Forfeiture for reductions of employment.* —

197 (1) With the annual return for the tax imposed by  
198 article twenty-three of this chapter filed for the  
199 taxable year in which the qualified investment is first

200 placed in service or use in this state, and for each  
201 succeeding taxable year thereafter during which the  
202 taxpayer seeks to apply this credit against tax, the  
203 taxpayer shall file a statement with the tax commis-  
204 sioner certifying that no West Virginia jobs have been  
205 lost or terminated and no decrease of working hours  
206 or layoffs of employees holding West Virginia jobs  
207 have resulted from the making of the qualified invest-  
208 ment upon which this credit is based or from the  
209 establishment or operation of the management infor-  
210 mation services facility upon which this credit is  
211 based.

212 (2) The taxpayer shall forfeit all annual credit  
213 otherwise available under this section during any year  
214 when West Virginia jobs have been lost or terminated  
215 or decreases of working hours or layoffs of employees  
216 holding West Virginia jobs have occurred as a result of  
217 the making of the qualified investment upon which  
218 this credit is based or the establishment or operation  
219 of the management information services facility upon  
220 which this credit is based, and the exemption from tax  
221 set forth in subsection (nn), section nine, article fifteen  
222 of this chapter shall not be available to the taxpayer  
223 during such year of forfeiture.

224 (3) The tax commissioner shall conduct such audits  
225 or reviews of each taxpayer in any year a credit is  
226 asserted under this section to verify the accuracy of a  
227 taxpayer's statement certifying that no West Virginia  
228 jobs have been lost or terminated and that no decrease  
229 of working hours or layoffs of employees holding West  
230 Virginia jobs have resulted from the making of  
231 qualified investments upon which this credit is based  
232 or from the establishment or operation of the manage-  
233 ment information services facility upon which this  
234 credit is based. Such audits shall also verify that all  
235 other requirements applicable to the allowance under  
236 a credit under this section continue to be met by the  
237 taxpayer.

238 (g) *Information disclosure.* — Providing that such  
239 disclosure can be made without directly or indirectly  
240 revealing the amount of credit available to any

particular taxpayer or taxpayer return information other than the name and address of the taxpayer, and notwithstanding any other provision of this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer receiving this credit allowed under this section by the thirty-first day of December, one thousand nine hundred ninety-two, and annually thereafter by the thirty-first day of December of each year. The tax commissioner shall publish in the state register, the amount of the credit asserted, by amount category, for each taxpayer asserting such credit. The categories by dollar amount of credit received, shall be as follows:

- (1) More than \$1.00, but not more than \$50,000;
- (2) More than \$50,000 but not more than \$100,000;
- (3) More than \$100,000 but not more than \$250,000;
- (4) More than \$250,000 but not more than \$500,000;
- and
- (5) More than \$500,000 but not more than \$1,000,000.

(h) *Report by the governor's office of community and industrial development.* — The governor's office of community and industrial development shall produce a report to the Legislature to be presented during the regular legislative session of one thousand nine hundred ninety-two. Such report shall state the identity of taxpayers who have received this management information services facility credit, and shall contain an analysis of the expansion and growth of management information services facilities in the state of West Virginia, the expansion of commerce resulting from the creation of this credit, and the number of jobs created as a result of this credit. The report of the governor's office of community and industrial development shall not directly or indirectly reveal the amount of credit available to any particular taxpayer or taxpayer return information other than the names and addresses of taxpayers.

**§11-13D-5b. Qualified investment for a management information services facility.**

(a) *General.* — The qualified investment in property purchased or leased for use as a component part of a management information services facility shall be the applicable percentage of the cost of each property purchased for a management information services facility, which is placed in service or use in this state, by the eligible taxpayer during the tax year as determined under this section.

(b) *Applicable percentage.* — For the purposes of subsection (a), the applicable percentage for any property shall be determined under the following table:

13 14	<b>If useful life or applicable lease term is:</b>	<b>The applicable percentage is:</b>
15	3 yrs. or more but less than 6 yrs. ....	33-1/3%
16	6 yrs. or more but less than 8 yrs. ....	66-2/3%
17	8 yrs. or more .....	100%

The useful life of any property for purposes of this section shall be the actual economic useful life determined as of the date such property is first placed in service or use in this state by the taxpayer, determined for financial accounting purposes in accordance with generally accepted principles of accounting.

(c) *Cost.* — For purposes of subsection (a), the cost of each property purchased for a management information services facility, shall be the fair market value or the actual cost, whichever is less, and in no event shall the cost exceed the fair market value, furthermore the cost shall be determined under the following rules:

(1) *Trade-ins.* — Cost shall not include the value of property given in trade or exchange for the property purchased for a management information services facility.

(2) *Damaged, destroyed or stolen property.* — If

36 property is damaged or destroyed by fire, flood, storm  
37 or other casualty, or is stolen, then the cost of replace-  
38 ment property shall not include any insurance pro-  
39 ceeds received in compensation for the loss.

40 (3) *Rental property.* — The cost of tangible personal  
41 property acquired by lease for a primary lease term of  
42 three or more years shall be seventy-five percent of  
43 the rent reserved for the shorter of:

44 (A) The first ten years of the primary lease term; or

45 (B) The primary lease term.

46 Such cost of leased tangible personal property shall  
47 then be multiplied by the applicable percentage  
48 determined under subsection (b) of this section based  
49 upon the shorter of the first ten years of the primary  
50 lease term or the primary lease term in order to  
51 determine qualified investment in such leased  
52 property.

53 (4) *Property purchased for multiple use.* — Invest-  
54 ment in property purchased for use in a management  
55 information services facility together with some other  
56 use shall not qualify for purposes of this credit.

57 (5) *Self-constructed property.* — In the case of self-  
58 constructed property, the cost thereof shall be the  
59 amount properly charged to the capital account for  
60 purposes of depreciation for federal income tax  
61 purposes.

62 (6) *Specific exclusions.* —

63 (A) Investment in land or buildings, whether pur-  
64 chased or leased, shall not qualify for purposes of this  
65 management information services facility credit.

66 (B) Investment by purchase or lease in natural  
67 resources in place; and investment by purchase or  
68 lease in property, the cost or consideration for which  
69 cannot be quantified with any reasonable degree of  
70 accuracy at the time such property is placed in service  
71 or use, shall not qualify for purposes of this manage-  
72 ment information services facility credit.

73 (C) Investment in property purchased, or leased, or  
74 placed in service or use prior to the first day of April,  
75 one thousand nine hundred ninety-one, or after the  
76 thirty-first day of March, one thousand nine hundred  
77 ninety-three, shall not qualify for purposes of this  
78 management information services facility credit.

79 (D) Investment in property not purchased, or leased,  
80 either for the purpose of expanding an existing  
81 management information services facility in West  
82 Virginia pursuant to a national, regional or interna-  
83 tional relocation or consolidation of significant man-  
84 agement information services in West Virginia; or for  
85 the purpose of establishing in this state a management  
86 information services facility that is new to West  
87 Virginia, shall not qualify for purposes of this manage-  
88 ment information services facility credit.

**§11-13D-6. Forfeiture of unused tax credits, redetermination  
of credit required.**

1 (a) *Disposition of property or cessation of use.* — If  
2 during any taxable year, property with respect to  
3 which a tax credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life,  
5 as determined under section four, five, five-a or five-  
6 b of this article; or

7 (2) Ceases to be used in the new or expanded or  
8 revitalized industrial business, or in the eligible  
9 research and development project, or in the qualified  
10 housing development project, or in a management  
11 information services facility of the taxpayer in this  
12 state prior to the end of its useful life, as determined  
13 under said section four, five, five-a or five-b, then the  
14 unused portion of the credit allowed for such property  
15 shall be forfeited for the taxable year and all ensuing  
16 years. Additionally, except when the property is  
17 damaged or destroyed by fire, flood, storm or other  
18 casualty, or is stolen, the taxpayer shall redetermine  
19 the amount of credit allowed in all earlier years by  
20 reducing the applicable percentage of cost of such  
21 property allowed under said section four, five-a or  
22 five-b, to correspond with the percentage of cost

allowable for the period of time that the property was actually used in this state in the industrial business or management information services business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business franchise tax return for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: *Provided*, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase "taxes imposed by article twelve-a or thirteen, or both, of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter or any one or combination of such articles of this chapter".

(b) *Cessation of operation of industrial facility or eligible research and development project, qualified housing development project or management information services facility.* — If during any taxable year, the taxpayer ceases operation of an industrial facility or a management information services facility in this state, or of an eligible research and development project, or a qualified housing development project, for which credit was allowed under this article, or article thirteen-c of this chapter prior to its repeal, before expiration of the useful life of the property with respect to which tax credit has been allowed under this article or article thirteen-c of this chapter prior to its repeal, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section four, five, five-a or five-b, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business or management information services business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business franchise tax return for the year in which the forfei-



65 ture occurs and pay any additional taxes owed due to  
 66 reduction of the amount of credit allowable for such  
 67 earlier years, plus interest and any applicable penal-  
 68 ties: *Provided*, That on and after the first day of July,  
 69 one thousand nine hundred eighty-seven, the phrase  
 70 "taxes imposed by article twelve-a or thirteen, or both,  
 71 of this chapter" shall mean "taxes imposed by articles  
 72 thirteen, thirteen-a and twenty-three of this chapter,  
 73 or any one or combination of such articles of this  
 74 chapter".

**§11-13D-7. Transfer of eligible investment to successors.**

1 (a) *Mere change in form of business.* — Property  
 2 shall not be treated as disposed of under section six of  
 3 this article, by reason of a mere change in the form of  
 4 conducting the business as long as the property is  
 5 retained in a similar industrial business or manage-  
 6 ment information services business activity in this  
 7 state and the taxpayer retains a controlling interest in  
 8 the successor business. In this event, the successor  
 9 business shall be allowed to claim the amount of credit  
 10 still available with respect to the industrial facility or  
 11 facilities transferred or to the eligible research and  
 12 development project or management information  
 13 services facility, and the taxpayer (transferor) shall  
 14 not be required to redetermine the amount of credit  
 15 allowed in earlier years.

16 (b) *Transfer or sale to successor.* — Provided that  
 17 the tax commissioner gives prior approval for a  
 18 transfer or sale, property shall not be treated as  
 19 disposed of under section six by reason of any transfer  
 20 or sale to a successor business which continues to  
 21 operate the industrial facility or management informa-  
 22 tion services facility in this state. Upon transfer or  
 23 sale, the successor shall acquire the amount of credit  
 24 that remains available under this article for each  
 25 taxable year subsequent to the taxable year of the  
 26 transferor during which the transfer occurred, and,  
 27 for the year of transfer, an amount of annual credit  
 28 for such year in the same proportion as the number of  
 29 days remaining in the transferor's taxable year bears  
 30 to the total number of days in such taxable year, and

31 the taxpayer (transferor) shall not be required to  
 32 redetermine the amount of credit allowed in earlier  
 33 years. In determining whether or not to approve a  
 34 disposition pursuant to this subsection, the tax com-  
 35 missioner shall take into account the legislative  
 36 findings and purpose contained in section one of this  
 37 article in making such decision.

**ARTICLE 15. CONSUMERS SALES TAX.**

**§11-15-2. Definitions.**

- 1 For the purpose of this article:
- 2 (a) "Persons" means any individual, partnership,  
3 association, corporation, state or its political subdivi-  
4 sions or agency of either, guardian, trustee, committee,  
5 executor or administrator.
- 6 (b) "Tax commissioner" means the state tax  
7 commissioner.
- 8 (c) "Gross proceeds" means the amount received in  
9 money, credits, property or other consideration from  
10 sales and services within this state, without deduction  
11 on account of the cost of property sold, amounts paid  
12 for interest or discounts or other expenses whatsoever.  
13 Losses shall not be deducted, but any credit or refund  
14 made for goods returned may be deducted.
- 15 (d) "Sale", "sales" or "selling" includes any transfer  
16 of the possession or ownership of tangible personal  
17 property for a consideration, including a lease or  
18 rental, when the transfer or delivery is made in the  
19 ordinary course of the transferor's business and is  
20 made to the transferee or his agent for consumption or  
21 use or any other purpose.
- 22 (e) "Vendor" means any person engaged in this state  
23 in furnishing services taxed by this article or making  
24 sales of tangible personal property.
- 25 (f) "Ultimate consumer" or "consumer" means a  
26 person who uses or consumes services or personal  
27 property.
- 28 (g) "Business" includes all activities engaged in or

29 caused to be engaged in with the object of gain or  
30 economic benefit, direct or indirect, and all activities  
31 of the state and its political subdivisions which involve  
32 sales of tangible personal property or the rendering of  
33 services when those service activities compete with or  
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties  
36 levied hereunder.

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

45 (j) "Purchaser" means a person who purchases  
46 tangible personal property or a service taxed by this  
47 article.

48 (k) "Personal service" includes those:

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

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

55 (l) "Taxpayer" means any person liable for the tax  
56 imposed by this article.

57 (m) "Drugs" includes all sales of drugs or appliances  
58 to a purchaser, upon prescription of a physician or  
59 dentist and any other professional person licensed to  
60 prescribe.

61 (n) (1) "Directly used or consumed" in the activities  
62 of manufacturing, transportation, transmission, com-  
63 munication or the production of natural resources  
64 means used or consumed in those activities or opera-  
65 tions which constitute an integral and essential part of  
66 such activities, as contrasted with and distinguished

67 from those activities or operations which are simply  
68 incidental, convenient or remote to such activities.

69 (2) Uses of property or consumption of services  
70 which constitute direct use or consumption in the  
71 activities of manufacturing, transportation, transmis-  
72 sion, communication or the production of natural  
73 resources includes only:

74 (A) In the case of tangible personal property, phys-  
75 ical incorporation of property into a finished product  
76 resulting from manufacturing production or the  
77 production of natural resources;

78 (B) Causing a direct physical, chemical or other  
79 change upon property undergoing manufacturing  
80 production or production of natural resources;

81 (C) Transporting or storing property undergoing  
82 transportation, communication, transmission, manu-  
83 facturing production or production of natural  
84 resources;

85 (D) Measuring or verifying a change in property  
86 directly used in transportation, communication, trans-  
87 mission, manufacturing production or production of  
88 natural resources;

89 (E) Physically controlling or directing the physical  
90 movement or operation of property directly used in  
91 transportation, communication, transmission, manu-  
92 facturing production or production of natural  
93 resources;

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

98 (G) Producing energy for property directly used in  
99 transportation, communication, transmission, manu-  
100 facturing production or production of natural  
101 resources;

102 (H) Facilitating the transmission of gas, water, steam  
103 or electricity from the point of their diversion to  
104 property directly used in transportation, communica-

105 tion, transmission, manufacturing production or pro-  
106 duction of natural resources;

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

111 (J) Serving as an operating supply for property  
112 undergoing transmission, manufacturing production or  
113 production of natural resources, or for property  
114 directly used in transportation, communication, trans-  
115 mission, manufacturing production or production of  
116 natural resources;

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

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

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

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

137 (3) Uses of property or services which would not  
138 constitute direct use or consumption in the activities of  
139 manufacturing, transportation, transmission, commu-  
140 nication or the production of natural resources  
141 includes, but are not limited to:

142 (A) Heating and illumination of office buildings;

143 (B) Janitorial or general cleaning activities;

144 (C) Personal comfort of personnel;

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

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

149 (F) An activity or function incidental or convenient  
150 to transportation, communication, transmission, manu-  
151 facturing production or production of natural resour-  
152 ces, rather than an integral and essential part of such  
153 activities.

154 (o) "Contracting".

155 (1) *In general.* — "Contracting" means and includes  
156 the furnishing of work, or both materials and work,  
157 for another (by a sole contractor, general contractor,  
158 prime contractor or subcontractor) in fulfillment of a  
159 contract for the construction, alteration, repair, deco-  
160 ration or improvement of a new or existing building or  
161 structure, or any part thereof, or for removal or  
162 demolition of a building or structure, or any part  
163 thereof, or for the alteration, improvement or develop-  
164 ment of real property.

165 (2) *Form of contract not controlling.* — An activity  
166 that falls within the scope of the definition of contract-  
167 ing shall constitute contracting regardless of whether  
168 such contract governing the activity is written or  
169 verbal and regardless of whether it is in substance or  
170 form a lump sum contract, a cost-plus contract, a time  
171 and materials contract, whether or not open-ended, or  
172 any other kind of construction contract.

173 (3) *Special rules.* — For purposes of this definition:

174 (A) The term "structure" includes, but is not limited  
175 to, everything built up or composed of parts joined  
176 together in some definite manner and attached or  
177 affixed to real property, or which adds utility to real  
178 property or any part thereof, or which adds utility to  
179 a particular parcel of property and is intended to  
180 remain there for an indefinite period of time.

181 (B) The term "alteration" means, and is limited to,  
182 alterations which are capital improvements to a  
183 building or structure or to real property.

184 (C) The term "repair" means, and is limited to,  
185 repairs which are capital improvements to a building  
186 or structure or to real property.

187 (D) The term "decoration" means, and is limited to,  
188 decorations which are capital improvements to a  
189 building or structure or to real property.

190 (E) The term "improvement" means, and is limited  
191 to, improvements which are capital improvements to a  
192 building or structure or to real property.

193 (F) The term "capital improvement" means  
194 improvements that are affixed to or attached to and  
195 become a part of a building or structure or the real  
196 property or which add utility to real property or any  
197 part thereof and that last, or are intended to be  
198 relatively permanent. As used herein, "relatively  
199 permanent" means lasting at least a year or longer in  
200 duration without the necessity for regularly scheduled  
201 recurring service to maintain such capital improve-  
202 ment. "Regular recurring service" means regularly  
203 scheduled service intervals of less than one year.

204 (G) Contracting does not include the furnishing of  
205 work, or both materials and work in the nature of  
206 hookup, connection, installation or other services if  
207 such service is incidental to the retail sale of tangible  
208 personal property from the service provider's inven-  
209 tory: *Provided*, That such hookup, connection or  
210 installation of the foregoing is incidental to the sale of  
211 the same and performed by the seller thereof or  
212 performed in accordance with arrangements made by  
213 the seller thereof. Examples of transactions that are  
214 excluded from the definition of contracting pursuant  
215 hereto include, but are not limited to, the sale of wall-  
216 to-wall carpeting and the installation of wall-to-wall  
217 carpeting, the sale, hookup and connection of mobile  
218 homes, window air conditioning units, dishwashers,  
219 clothing washing machines or dryers, other household  
220 appliances, drapery rods, window shades, venetian

221 blinds, canvas awnings, free standing industrial or  
222 commercial equipment and other similar items of  
223 tangible personal property. Repairs made to the  
224 foregoing are within the definition of contracting if  
225 such repairs involve permanently affixing to or  
226 improving real property or something attached thereto  
227 which extends the life of the real property or some-  
228 thing affixed thereto or allows or is intended to allow  
229 such real property or thing permanently attached  
230 thereto to remain in service for a year or longer.

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

238 (q) "Transportation" means the act or process of  
239 conveying, as a commercial enterprise, passengers or  
240 goods from one place or geographical location to  
241 another place or geographical location.

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

247 (s) "Communication" means all telephone, radio,  
248 light, light wave, radio telephone, telegraph and other  
249 communication or means of communication, whether  
250 used for voice communication, computer data trans-  
251 mission or other encoded symbolic information  
252 transfers and shall include commercial broadcast  
253 radio, commercial broadcast television and cable  
254 television.

255 (t) "Production of natural resources" means the  
256 performance, by either the owner of the natural  
257 resources or another, of the act or process of exploring,  
258 developing, severing, extracting, reducing to possession  
259 and loading for shipment for sale, profit or commercial  
260 use of any natural resource products and any reclama-



261 tion, waste disposal or environmental activities asso-  
262 ciated therewith.

263 (u) "Management information services facility"  
264 means a building, or any part thereof, or a complex of  
265 buildings, or any part thereof, including the machin-  
266 ery and equipment located therein, that is exclusively  
267 dedicated to providing management information servi-  
268 ces to the owner or operator thereof or to another  
269 person.

270 (v) "Management information services" means, and  
271 is limited to, data processing, data storage, data  
272 recovery and backup, programming recovery and  
273 backup, telecommunications, computation and com-  
274 puter processing, computer programming, electronic  
275 information, and data management activities, or any  
276 combination of such activities, when such activity, or  
277 activities, is not subject to regulation by the West  
278 Virginia public service commission and such activity,  
279 or activities, is for the purpose of managing, planning  
280 for, organizing, or operating, any industrial or com-  
281 mercial business, or any enterprise, facility or facilities  
282 of an industrial or commercial business, whether such  
283 industrial or commercial business or enterprise,  
284 facility or facilities of an industrial or commercial  
285 business is located within or without this state and  
286 without regard to whether such industrial or commer-  
287 cial business, or enterprise, facility or facilities of an  
288 industrial or commercial business is owned by the  
289 provider of the management information services or  
290 by a "related person", as defined in Section 267(b) of  
291 the Internal Revenue Code of 1986, as amended.

**§11-15-9. Exemptions.**

1 The following sales and services are exempt:

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

5 (b) Sales of textbooks required to be used in any of  
6 the schools of this state or in any institution in this  
7 state which qualifies as a nonprofit or educational

8 institution subject to the West Virginia department of  
9 education and the arts; board of trustees of the  
10 university system of West Virginia, or the board of  
11 directors for colleges located in this state;

12 (c) Sales of property or services to the state, its  
13 institutions or subdivisions, governmental units,  
14 institutions or subdivisions of other states: *Provided*,  
15 That the law of such other state provides the same  
16 exemption to governmental units or subdivisions of  
17 this state and to the United States, including agencies  
18 of federal, state or local governments for distribution  
19 in public welfare or relief work;

20 (d) Sales of vehicles which are titled by the division  
21 of motor vehicles and which are subject to the tax  
22 imposed by section four, article three, chapter  
23 seventeen-a of this code, or like tax;

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

32 (f) Sales of tangible personal property or services to  
33 a corporation or organization which has a current  
34 registration certificate issued under article twelve of  
35 this chapter is exempt from federal income taxes  
36 under section 501(c)(3) or (c)(4) of the Internal Reve-  
37 nue Code of 1986, as amended, and is:

38 (1) A church or a convention or association of  
39 churches as defined in section 170 of the Internal  
40 Revenue Code of 1986, as amended;

41 (2) An elementary or secondary school which main-  
42 tains a regular faculty and curriculum and has a  
43 regularly enrolled body of pupils or students in  
44 attendance at the place in this state where its educa-  
45 tional activities are regularly carried on;

46 (3) A corporation or organization which annually

47 receives more than one half of its support from any  
48 combination of gifts, grants, direct or indirect charita-  
49 ble contributions, or membership fees;

50 (4) An organization which has no paid employees  
51 and its gross income from fund raisers, less reasonable  
52 and necessary expenses incurred to raise such gross  
53 income (or the tangible personal property or services  
54 purchased with such net income), is donated to an  
55 organization which is exempt from income taxes  
56 under section 501(c)(3) or (c)(4) of the Internal Reve-  
57 nue Code of 1986, as amended;

58 (5) A youth organization, such as the girl scouts of  
59 the United States of America, the boy scouts of  
60 America, or the YMCA Indian guide/princess pro-  
61 gram, and the local affiliates thereof, which is organ-  
62 ized and operated exclusively for charitable purposes  
63 and has as its primary purpose the nonsectarian  
64 character development and citizenship training of its  
65 members;

66 (6) For purposes of this subsection:

67 (A) The term "support" includes, but is not limited  
68 to:

69 (i) Gifts, grants, contributions or membership fees;

70 (ii) Gross receipts from fund raisers which include  
71 receipts from admissions, sales of merchandise, perfor-  
72 mance of services or furnishing of facilities in any  
73 activity which is not an unrelated trade or business  
74 within the meaning of section 513 of the Internal  
75 Revenue Code of 1986, as amended;

76 (iii) Net income from unrelated business activities,  
77 whether or not such activities are carried on regularly  
78 as a trade or business;

79 (iv) Gross investment income as defined in section  
80 509(e) of the Internal Revenue Code of 1986, as  
81 amended;

82 (v) Tax revenues levied for the benefit of a corpora-  
83 tion or organization either paid to or expended on  
84 behalf of such organization; and

85 (vi) The value of services or facilities (exclusive of  
86 services or facilities generally furnished to the public  
87 without charge) furnished by a governmental unit  
88 referred to in section 170(c)(1) of the Internal Revenue  
89 Code of 1986, as amended, to an organization without  
90 charge. This term does not include any gain from the  
91 sale or other disposition of property which would be  
92 considered as gain from the sale or exchange of a  
93 capital asset, or the value of an exemption from any  
94 federal, state or local tax or any similar benefit;

95 (B) The term "charitable contribution" means a  
96 contribution or gift to or for the use of a corporation  
97 or organization, described in section 170(c)(2) of the  
98 Internal Revenue Code of 1986, as amended;

99 (C) The term "membership fee" does not include  
100 any amounts paid for tangible personal property or  
101 specific services rendered to members by the corpora-  
102 tion or organization; or

103 (7) The exemption allowed by this subsection (f) does  
104 not apply to sales of gasoline or special fuel or to sales  
105 of tangible personal property or services to be used or  
106 consumed in the generation of unrelated business  
107 income as defined in section 513 of the Internal  
108 Revenue Code of 1986, as amended. The provisions of  
109 this subsection as amended by this act shall apply to  
110 sales made after the thirtieth day of June, one thou-  
111 sand nine hundred eighty-nine: *Provided*, That the  
112 exemption herein granted shall apply only to services,  
113 equipment, supplies and materials used or consumed  
114 in the activities for which such organizations qualify  
115 as tax exempt organizations under the Internal Reve-  
116 nue Code by these organizations and shall not apply to  
117 purchases of gasoline or special fuel;

118 (g) Sales of property or services to persons engaged  
119 in this state in the business of manufacturing, trans-  
120 portation, transmission, communication or in the  
121 production of natural resources: *Provided*, That the  
122 exemption herein granted shall apply only to services,  
123 machinery, supplies and materials directly used or  
124 consumed in the businesses or organizations named

125 above, and shall not apply to purchases of gasoline or  
126 special fuel: *Provided, however,* That on and after the  
127 first day of July, one thousand nine hundred eighty-  
128 seven, the exemption provided in this subsection shall  
129 apply only to services, machinery, supplies and mate-  
130 rials directly used or consumed in the activities of  
131 manufacturing, transportation, transmission, commu-  
132 nication or the production of natural resources in the  
133 businesses or organizations named above and shall not  
134 apply to purchases of gasoline or special fuel;

135 (h) An isolated transaction in which any taxable  
136 service or any tangible personal property is sold,  
137 transferred, offered for sale or delivered by the owner  
138 thereof or by his representative for the owner's  
139 account, such sale, transfer, offer for sale or delivery  
140 not being made in the ordinary course of repeated and  
141 successive transactions of like character by such owner  
142 or on his account by such representative: *Provided,*  
143 That nothing contained herein may be construed to  
144 prevent an owner who sells, transfers or offers for sale  
145 tangible personal property in an isolated transaction  
146 through an auctioneer from availing himself or herself  
147 of the exemption provided herein, regardless where  
148 such isolated sale takes place. The tax commissioner  
149 may adopt such legislative rule pursuant to chapter  
150 twenty-nine-a of this code as he deems necessary for  
151 the efficient administration of this exemption;

152 (i) Sales of tangible personal property or of any  
153 taxable services rendered for use or consumption in  
154 connection with the commercial production of an  
155 agricultural product the ultimate sale of which will be  
156 subject to the tax imposed by this article or which  
157 would have been subject to tax under this article:  
158 *Provided,* That sales of tangible personal property and  
159 services to be used or consumed in the construction of  
160 or permanent improvement to real property and sales  
161 of gasoline and special fuel shall not be exempt;

162 (j) Sales of tangible personal property to a person for  
163 the purpose of resale in the form of tangible personal  
164 property: *Provided,* That sales of gasoline and special  
165 fuel by distributors and importers shall be taxable

166 except when the sale is to another distributor for  
167 resale: *Provided, however,* That sales of building  
168 materials or building supplies or other property to any  
169 person engaging in the activity of contracting, as  
170 defined in this article, which is to be installed in,  
171 affixed to or incorporated by such person or his agent  
172 into any real property, building or structure shall not  
173 be exempt under this subsection, except that sales of  
174 tangible personal property to a person engaging in the  
175 activity of contracting pursuant to a written contract  
176 with the United States, this state, or with a political  
177 subdivision thereof, or with a public corporation  
178 created by the Legislature or by another governmental  
179 entity pursuant to an act of the Legislature, for a  
180 building or structure, or improvement thereto, or  
181 other improvement to real property that is or will be  
182 owned and used by the governmental entity for a  
183 governmental or proprietary purpose, who incorpo-  
184 rates such property in such building, structure or  
185 improvement shall, with respect to such tangible  
186 personal property, nevertheless be deemed to be the  
187 vendor of such property to the governmental entity  
188 and any person seeking to qualify for and assert this  
189 exception must do so pursuant to such legislative rules  
190 and regulations as the tax commissioner may promul-  
191 gate and upon such forms as the tax commissioner  
192 may prescribe. A subcontractor who, pursuant to a  
193 written subcontract with a prime contractor who  
194 qualifies for this exception, provides equipment, or  
195 materials, and labor to such a prime contractor shall  
196 be treated in the same manner as the prime contractor  
197 is treated with respect to the prime contract under  
198 this exception and the legislative rules and regulations  
199 promulgated by the tax commissioner: *Provided*  
200 *further,* That the exemption for government contrac-  
201 tors in the preceding proviso shall expire on the first  
202 day of October, one thousand nine hundred ninety,  
203 subject to the transition rules set forth in section  
204 eight-c of this article;

205 (k) Sales of property or services to nationally  
206 chartered fraternal or social organizations for the sole  
207 purpose of free distribution in public welfare or relief

208 work: *Provided*, That sales of gasoline and special fuel  
209 shall be taxable;

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

216 (m) Sales of newspapers when delivered to consu-  
217 mers by route carriers;

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

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

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

225 (q) Casual and occasional sales of property or  
226 services not conducted in a repeated manner or in the  
227 ordinary course of repetitive and successive transac-  
228 tions of like character by a corporation or organization  
229 which is exempt from tax under subsection (f) of this  
230 section on its purchases of tangible personal property  
231 or services:

232 (1) For purposes of this subsection, the term "casual  
233 and occasional sales not conducted in repeated manner  
234 or in the ordinary course of repetitive and successive  
235 transactions of like character" means sales of tangible  
236 personal property or services at fund raisers sponsored  
237 by a corporation or organization which is exempt,  
238 under subsection (f) of this section, from payment of  
239 the tax imposed by this article on its purchases, when  
240 such fund raisers are of limited duration and are held  
241 no more than six times during any twelve-month  
242 period and limited duration means no more than  
243 eighty-four consecutive hours;

244 (2) The provisions of this subsection (q), as amended  
245 by this act, shall apply to sales made after the thirtieth

246 day of June, one thousand nine hundred eighty-nine;

247 (r) Sales of property or services to a school which  
 248 has approval from the board of trustees of the univer-  
 249 sity system of West Virginia or the board of directors  
 250 of the state college system to award degrees, which has  
 251 its principal campus in this state, and which is exempt  
 252 from federal and state income taxes under section  
 253 501(c)(3) of the Internal Revenue Code of 1986, as  
 254 amended: *Provided*, That sales of gasoline and special  
 255 fuel shall be taxable;

256 (s) Sales of mobile homes to be utilized by purchas-  
 257 ers as their principal year-round residence and dwell-  
 258 ing: *Provided*, That these mobile homes shall be  
 259 subject to tax at the three percent rate;

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

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

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

282 (w) Sales of propane to consumers for poultry house  
 283 heating purposes, with any seller to such consumer  
 284 who may have prior paid such tax in his price, to not



285 pass on the same to the consumer, but to make  
286 application and receive refund of such tax from the  
287 tax commissioner, pursuant to rules and regulations  
288 which shall be promulgated by the tax commissioner;  
289 and notwithstanding the provisions of section eighteen  
290 of this article or any other provisions of such article to  
291 the contrary;

292 (x) Any sales of tangible personal property or  
293 services purchased after the thirtieth day of September,  
294 one thousand nine hundred eighty-seven, and  
295 lawfully paid for with food stamps pursuant to the  
296 federal food stamp program codified in 7 United States  
297 Code, §2011, et seq., as amended, or with drafts issued  
298 through the West Virginia special supplemental food  
299 program for women, infants and children codified in  
300 42 United States Code, §1786;

301 (y) Sales of tickets for activities sponsored by  
302 elementary and secondary schools located within this  
303 state;

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

318 (aa) Tuition charged for attending educational  
319 summer camps;

320 (bb) Sales of building materials or building supplies  
321 or other property to an organization qualified under  
322 section 501(c)(3) or (c)(4) of the Internal Revenue Code  
323 of 1986, as amended, which are to be installed in,  
324 affixed to or incorporated by such organization or its

325 agent into real property, or into a building or structure  
 326 which is or will be used as permanent low-income  
 327 housing, transitional housing, emergency homeless  
 328 shelter, domestic violence shelter or emergency chil-  
 329 dren and youth shelter if such shelter is owned,  
 330 managed, developed or operated by an organization  
 331 qualified under section 501(c)(3) or (c)(4) of the  
 332 Internal Revenue Code of 1986, as amended;

333 (cc) Dispensing of services performed by one corpo-  
 334 ration for another corporation when both corporations  
 335 are members of the same controlled group. Control  
 336 means ownership, directly or indirectly, of stock  
 337 possessing fifty percent or more of the total combined  
 338 voting power of all classes of the stock of a corporation  
 339 entitled to vote or ownership, directly or indirectly, of  
 340 stock possessing fifty percent or more of the value of  
 341 the corporation;

342 (dd) Food for the following shall be exempt:

343 (1) Food purchased or sold by public or private  
 344 schools, school sponsored student organizations, or  
 345 school sponsored parent-teacher associations to stu-  
 346 dents enrolled in such school or to employees of such  
 347 school during normal school hours; but not those sales  
 348 of food made to the general public;

349 (2) Food purchased or sold by a public or private  
 350 college or university or by a student organization  
 351 officially recognized by such college or university to  
 352 students enrolled at such college or university when  
 353 such sales are made on a contract basis so that a fixed  
 354 price is paid for consumption of food products for a  
 355 specific period of time without respect to the amount  
 356 of food product actually consumed by the particular  
 357 individual contracting for the sale and no money is  
 358 paid at the time the food product is served or  
 359 consumed;

360 (3) Food purchased or sold by a charitable or private  
 361 nonprofit organization, a nonprofit organization or a  
 362 governmental agency under a program to provide food  
 363 to low-income persons at or below cost;

364 (4) Food sold in an occasional sale by a charitable or  
365 nonprofit organization including volunteer fire depart-  
366 ments and rescue squads, if the purpose of the sale is  
367 to obtain revenue for the functions and activities of  
368 the organization and the revenue so obtained is  
369 actually expended for that purpose;

370 (5) Food sold by any religious organization at a social  
371 or other gathering conducted by it or under its  
372 auspices, if the purpose in selling the food is to obtain  
373 revenue for the functions and activities of the organi-  
374 zation and the revenue obtained from selling the food  
375 is actually used in carrying on such functions and  
376 activities: *Provided*, That purchases made by such  
377 organizations shall not be exempt as a purchase for  
378 resale;

379 (ee) Sales of food by little leagues, midget football  
380 leagues, youth football or soccer leagues and similar  
381 types of organizations, including scouting groups and  
382 church youth groups, if the purpose in selling the food  
383 is to obtain revenue for the functions and activities of  
384 the organization and the revenues obtained from  
385 selling the food is actually used in supporting or  
386 carrying on functions and activities of the groups:  
387 *Provided*, That such purchases made by such organi-  
388 zations shall not be exempt as a purchase for resale;

389 (ff) Charges for room and meals by fraternities and  
390 sororities to their members: *Provided*, That such  
391 purchases made by a fraternity or sorority shall not be  
392 exempt as a purchase for resale;

393 (gg) Sales of or charges for the transportation of  
394 passengers in interstate commerce;

395 (hh) Sales of tangible personal property or services  
396 to any person which this state is prohibited from  
397 taxing under the laws of the United States or under  
398 the constitution of this state;

399 (ii) Sales of tangible personal property or services to  
400 any person who claims exemption from the tax  
401 imposed by this article or article fifteen-a of this  
402 chapter pursuant to the provisions of any other

403 chapter of this code;

404 (jj) Charges for the services of opening and closing  
405 a burial lot;

406 (kk) Sales of livestock, poultry or other farm pro-  
407 ducts in their original state by the producer thereof or  
408 a member of the producer's immediate family who is  
409 not otherwise engaged in making retail sales of  
410 tangible personal property; and sales of livestock sold  
411 at public sales sponsored by breeder's or registry  
412 associations or livestock auction markets: *Provided*,  
413 That the exemptions allowed by this subsection shall  
414 apply to sales made on or after the first day of July,  
415 one thousand nine hundred ninety, and may be  
416 claimed without presenting or obtaining exemption  
417 certificates: *Provided, however*, That the farmer shall  
418 maintain adequate records;

419 (ll) Sales of motion picture films to motion picture  
420 exhibitors for exhibition if the sale of tickets or the  
421 charge for admission to the exhibition of the film is  
422 subject to the tax imposed by this article and sales of  
423 coin-operated video arcade machines, or video arcade  
424 games, to a person engaged in the business of provid-  
425 ing such machines to the public for a charge upon  
426 which the tax imposed by this article is remitted to the  
427 tax commissioner: *Provided*, That the exemption  
428 provided in this subsection shall apply to sales made  
429 on or after the first day of July, one thousand nine  
430 hundred ninety, and may be claimed by presenting to  
431 the seller a properly executed exemption certificate;

432 (mm) Sales of aircraft repair, remodeling and  
433 maintenance services when such services are to an  
434 aircraft operated by a certified or licensed carrier of  
435 persons or property, or by a governmental entity, or to  
436 an engine or other component part of an aircraft  
437 operated by a certificated or licensed carrier of  
438 persons or property, or by a governmental entity and  
439 sales of tangible personal property that is permanently  
440 affixed or permanently attached as a component part  
441 of an aircraft owned or operated by a certificated or  
442 licensed carrier of persons or property, or by a

443 governmental entity, as part of the repair, remodeling  
444 or maintenance service and sales of machinery, tools,  
445 or equipment, directly used or consumed exclusively  
446 in the repair, remodeling, or maintenance of aircraft,  
447 aircraft engines, or aircraft component parts, for a  
448 certificated or licensed carrier of persons or property,  
449 or for a governmental entity; and

450 (nn) Sales of tangible personal property and services  
451 to a person entitled to claim the tax credit for invest-  
452 ment in certain management information services  
453 facilities allowed under section three-c, article  
454 thirteen-d of this chapter, pursuant to the issuance of  
455 a management information services tax credit certifi-  
456 cation by the tax commissioner in accordance with  
457 subsection (e), section three-c, article thirteen-d of this  
458 chapter, when such property or services are directly  
459 used or consumed by the purchaser in the operation of  
460 the management information services facility, as  
461 defined in section two of this article for which credit  
462 is allowed under section three-c, article thirteen-d of  
463 this chapter. Tangible personal property, or services,  
464 directly used or consumed in the operation of a  
465 management information services facility includes  
466 only: (1) Computer processing and telecommunications  
467 equipment; (2) data storage and input/output devices;  
468 (3) disaster recovery services; (4) supplies; (5) applica-  
469 tion, telecommunication and operating system soft-  
470 ware; (6) repair and maintenance of any of the  
471 aforesaid items; and (7) other tangible personal prop-  
472 erty or services directly used or consumed in the  
473 operation of a management information services  
474 facility: *Provided*, That the property is purchased or  
475 leased after the thirty-first day of March, one thou-  
476 sand nine hundred ninety-one. This exemption shall  
477 not apply to tangible personal property, or services,  
478 that are not directly used or consumed in the opera-  
479 tion of a management information services facility, or  
480 to gasoline or special fuel: *Provided, however*, That  
481 nothing in this paragraph shall be construed to limit,  
482 exclude or preclude the application or availability of  
483 any other exemption set forth in this section, or  
484 elsewhere in this code, which might otherwise apply  
485 to any sale of tangible personal property or services.

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

*Homer Tick*

Chairman Senate Committee

*Ernest C. Moore*

Chairman House Committee

Originated in the Senate.

In effect from passage.

*Parrell E. Atkins*

Clerk of the Senate

*Donald G. Koep*

Clerk of the House of Delegates

*Keith Burdette*

President of the Senate

*John C. Eubank*

Speaker House of Delegates

The within *is approved* this the *22nd*  
day of *March*, 1991.

*Walter Casperson*

Governor

PRESENTED TO THE

GOVERNOR

Date

3/20/91

Time

5:12 pm