WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED
Committee Substitute for
SENATE BILL NO. 173
(Originating in the Committee
on Finance)

PASSED March 9, 1991
In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 173
(Originating in the Committee on Finance)

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

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 location of new industry in this state; the expansion, growth and revitalization of existing industrial facilities in this state; the conduct of research and development in this state, for purposes of expanding markets for sales and uses of this state's natural resources and industrial products, the construction of residential housing and the creation or expansion of management information services facilities are all in the public interest and promote the general welfare of the people of this state.

12 In order to encourage capital investment in this state and thereby increase employment and economic development, there is hereby provided a tax credit for industrial expansion and revitalization in this state, for certain research and development related expendi-
In this state, for certain housing and development related expenditures in this state and for the creation or expansion of certain management information services facilities in this state.


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

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

(1) "Eligible investment" means that amount determined under either section four of this article, for investment in a new or expanded or revitalized industrial facility, or under section five of this article, in the case of an eligible research and development project, under section five-a for a qualified housing development project, or under five-b for a management information services facility.

(2) Eligible taxpayer.

(A) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of revitalizing an existing industrial facility in this state; or a taxpayer who purchases property or services, or both, for the purpose of conducting an eligible research and development project in this state or for the purpose of constructing a qualified housing development project in this state.

(B) An eligible taxpayer for purposes of the management information services facility credit means a taxpayer fulfilling the requirements of paragraph (C) or (D) of this subdivision which has purchased, or leased, and placed into service or use in a management information services facility, qualified investment, as defined under section five-b of this article, of two million dollars or more over a time period of not more than three hundred sixty-five consecutive days and which operates such management information services
facility, without regard to whether such taxpayer is an
industrial taxpayer or engages in an industrial busi-
ness or operates an industrial facility as herein
defined.

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

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

(D) Notwithstanding paragraph (C) of this subdivi-
sion, a person, entity, successor in business which
would otherwise not constitute an eligible taxpayer
under paragraph (C) of this subdivision may nonever-
theless constitute an eligible taxpayer for purposes of this
management information services facility credit if
such person, entity, successor places qualified invest-
ment into service or use in West Virginia for the
purpose of establishing in this state a management
information services facility that is new to West
Virginia and which services do not include any
management information services previously con-
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
generating electric power, and the business of provid-
ing a manufacturing service, which were taxable,
respectively, under sections two-b, two-m and two-h,
article thirteen of this chapter, on the first day of
January, one thousand nine hundred eighty-five.

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

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

(7) “Industrial expansion” means capital investment
in a new or expanded industrial facility in this state.

(8) “Industrial taxpayer” means any person subject
to business and occupation taxes under article thirteen
of this chapter, exercising any privilege taxable under
section two-b or two-m of said article thirteen, or
providing a manufacturing service taxable under
section two-h of said article thirteen: Provided, That
on and after the first day of July, one thousand nine
hundred eighty-seven, “industrial taxpayer” shall
mean any person subject to tax under section two-m,
article thirteen of this chapter; or any person subject
to tax under article thirteen-a or twenty-three of this
chapter engaging in any activity that was taxable
under section two-b, article thirteen of this chapter, on
the first day of January, one thousand nine hundred
eighty-five; or any person taxable under article
twenty-three of this chapter providing a manufactur-
ing service that was taxable under section two-h,
article thirteen of this chapter on the first day of
January, one thousand nine hundred eighty-five.

(9) "Management information services facility" means a building, or any part thereof, or a complex of buildings, or any part thereof, including the machinery and equipment located therein, that is exclusively dedicated to providing management information services to the owner or operator thereof or to another person.

(10) "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, programming recovery and backup, telecommunications, computation and computer processing, computer programming, electronic information, and data management activities, or any combination of such activities, when such activity, or activities, is not subject to regulation by the West Virginia public service commission and such activity, or activities, is for the purpose of managing, planning for, organizing or operating, any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business, whether such industrial or commercial business or enterprise, facility or facilities of an industrial or commercial business is located within or without this state and without regard to whether such industrial or commercial business, or enterprise, facility or facilities of an industrial or commercial business is owned by the provider of the management information services or by a "related person", as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended.

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

(12) Subject to subdivision (15) below, "property purchased for an eligible research and development project" means real property, and improvements thereto, and tangible personal property, but only if
such real or personal property is constructed or purchased on or after the first day of July, one thousand nine hundred eighty-five, for use as a component part of an eligible research and development project which is located within this state on or after the first day of July, one thousand nine hundred eighty-five. This term includes only tangible personal property with respect to which depreciation or amortization, in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the purchaser under article twenty-one or twenty-four of this chapter. Property acquired by written lease for a term of ten years or longer, if used as a component part of an eligible research and development project, shall be included within this definition.

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

(14) Subject to subdivision (15) below, "property purchased for industrial revitalization" means real property, and improvements thereto, and new tangible personal property, but only if such property was
constructed, or purchased, on or after the first day of July, one thousand nine hundred eighty-one, for use as a component part of an ongoing industrial facility as defined in subdivision (5) of this subsection located within this state. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under article twenty-one or twenty-four of this chapter, and has a useful life at the time the property is placed in service or use in this state of four years or more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of an industrial revitalization, shall be included within this definition.

(15) “Property purchased for industrial expansion”, “property purchased for industrial revitalization”, “property purchased for an eligible research and development project”, “property purchased for a qualified housing development project” and “property purchased or leased for a management information services facility” shall not include:

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

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

(C) Airplanes;

(D) Off-premise transportation equipment;

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

(F) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his industrial business in this state, or which property was previously designated “property purchased for industrial expansion”, or “property purchased for industrial revitalization”, or “property purchased for an eligible research and development
project”, or “property purchased for a qualified housing development project”, and used to qualify for business and occupation tax credit for industrial expansion or revitalization, or for an eligible research and development project, or for a qualified housing development project, or property which was subject to or gave rise to the management information services facility credit in the hands of the transferor, except that successors in business shall have successor credit available pursuant to section seven of this article.

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

Subject to subdivision (15) above, “property purchased or leased for a management information services facility” means tangible personal property purchased from a West Virginia vendor in West Virginia or leased through or from a West Virginia vendor for a primary lease term of three years or more. For purposes of this section the term “tangible personal property” shall include prewritten or “canned” computer software, “custom” software and computer programming services which result in the production of custom software: Provided, That the term “property purchased or leased for a management information services facility” shall not include:

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

(B) Natural resources in place;

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

or use;

(D) Property purchased or leased or placed in service or use prior to the first day of April, one thousand nine hundred ninety-one or property purchased or leased or placed in service or use after the thirty-first day of March, one thousand nine hundred ninety-three; or

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

(i) Expanding an existing management information services facility in West Virginia pursuant to a relocation or consolidation of significant national, regional or international management information services operation to West Virginia; or

(ii) Establishing in this state a management information services facility that is new to West Virginia.

(18) Property shall be deemed to have been purchased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the taxpayer prior to the specified date;

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

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

(19) "Taxpayer" means any person taxable under article thirteen of this chapter. Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "taxpayer" shall mean any person taxable under article thirteen, thirteen-a or twenty-three of this chapter.
§11-13D-5c. 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 eligible taxpayers a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in a management information services facility. The amount of credit shall be determined as hereinafter provided in this section.

(b) Investment period limitations subject to extension upon legislative amendment. — It is the finding of the Legislature that certain tax credits heretofore enacted have not effectively fulfilled the intended legislative purpose of increasing employment and economic growth and development in this state. Therefore, the time period over which qualified investment property may be purchased or leased and placed in service or use by eligible taxpayers at a management information services facility is expressly limited, for purposes of this credit, to two years under paragraph (C), subdivision (17), subsection (b), section two of this article, subsection (c) of this section, and paragraph (B), subdivision (6), subsection (c), section five-b of this article. If the Legislature subsequently finds that this credit for a management information services facility effectively fulfills the legislative purpose for which it was enacted, the Legislature may, in its discretion, extend, by statutory amendment, the time period over which qualified investment may be purchased, or leased, and placed in service or use.

(c) Credit amount for qualified investment purchased and placed in service or use in a management information services facility after the thirty-first day of March, one thousand nine hundred ninety-one and prior to the first day of April, one thousand nine hundred ninety-three. — For property purchased or leased by an eligible taxpayer and placed in service or use after the thirty-first day of March, one thousand nine hundred ninety-one, and prior to the first day of April, one thousand nine hundred ninety-three, for use as a component part of a management information
services facility, the amount of allowable credit shall be equal to one hundred percent of the qualified investment, as determined under section five-b of this article, and shall reduce the business franchise tax under article twenty-three of this chapter and the corporation net income tax under article twenty-four of this chapter, subject to the following conditions and limitations:

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

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

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

(C) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) of this subdivision (1) shall then be applied against the tax liabilities in the manner specified in subdivision (2) of this subsection (c) for the tax year immediately succeeding the tax year during which the qualified investment was first placed in service or use in this state and for each succeeding tax year thereafter up through the ninth tax year subsequent to the first tax year in which the qualified investment property was first placed in service or use.

(D) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) and then paragraph (C) of this subdivision shall be forfeited and shall not carry forward to any subsequent tax year.

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

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

(A) This credit for qualified investment in a management information services facility shall first be
applied to reduce the annual West Virginia business
franchise tax liability imposed under article twenty-
three of this chapter for the tax year by an amount
such that this credit, in combined application with all
other applicable credits allowable under articles
thirteen-c, thirteen-d and thirteen-e of this chapter
and under chapter five-e of this code and all other tax
credits provided in this code, shall not reduce the
annual business franchise tax liability for such tax
year below fifty percent of the amount of the annual
tax liability which would otherwise be imposed for
such tax year in the absence of this credit and all
credits against such tax, except the credits set forth in
section seventeen, article twenty-three of this chapter.

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

(C) After application of this credit against business
franchise tax under paragraph (A) of this subdivision
(2), and then against corporation net income tax under
paragraph (B) of this subdivision (2); remaining credit
for qualified investment in a management information
services facility, if any, shall then be applied to further reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit shall not reduce the annual business franchise tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(D) After application of this credit against business franchise tax under paragraph (A) of this subdivision (2) and then against corporation net income tax under paragraph (B) of this subdivision (2), and then against business franchise tax under paragraph (C) of this subdivision (2); remaining credit for qualified investment in a management information services facility, if any, shall then be applied to further reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit shall not reduce the annual corporation net income tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(d) Maximum annual credit allowance. — (1) Notwithstanding any other provision of this section, no taxpayer may take or apply more than one million dollars of this credit against all taxes, in the aggregate, against which this credit may apply in any taxable year, and no related person or persons as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended, may, in the aggregate, take or apply more than one million dollars of this credit against all taxes, in the aggregate, against which this credit may apply in any taxable year.

(2) Notwithstanding any other provision of this
section, the total amount of credit certified under this
subsection (e) for all taxpayers shall not exceed five
million dollars per year. The tax commissioner shall
allocate this credit to eligible taxpayers in the order
that such taxpayers are certified under subsection (e)
of this section: Provided, That no taxpayer or any
related person to such taxpayer (as amended in section
267(b) of the Internal Revenue Code of 1986), as
amended, shall be allocated more than five million
dollars.
(e) Certification of credit required. —
(1) Application required. — No credit shall be
allowed or applied under this section for any invest-
ment in any management information services facility
until the person asserting a claim for the allowance of
credit under this article makes written application to
the tax commissioner for allowance of credit as
provided in this section and receives written certifica-
tion of its claim from the tax commissioner. An
application for credit shall be filed, in such form as the
tax commissioner shall prescribe, prior to the first date
when qualified investment property is first placed in
service or use, and whether such property will be
placed in service during the same tax year or over a
period of two or more successive tax years. All
information required by such form shall be provided.
No credit shall be taken by a taxpayer applicant or
prospective applicant pursuant to this section and the
exemption from tax set forth under subsection (nn),
section nine, article fifteen of this chapter shall not be
available to a taxpayer applicant or prospective appli-
cant until certification has been issued by the tax
commissioner.
(2) Failure to file. — The failure to timely apply for
certification under this subsection (e) shall result in
the forfeiture of the credit otherwise allowable under
this section.
(f) Forfeiture for reductions of employment. —

(1) With the annual return for the tax imposed by
article twenty-three of this chapter filed for the
taxable year in which the qualified investment is first
placed in service or use in this state, and for each succeeding taxable year thereafter during which the taxpayer seeks to apply this credit against tax, the taxpayer shall file a statement with the tax commissioner certifying that no West Virginia jobs have been lost or terminated and no decrease of working hours or layoffs of employees holding West Virginia jobs have resulted from the making of the qualified investment upon which this credit is based or from the establishment or operation of the management information services facility upon which this credit is based.

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

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

(g) Information disclosure. — Providing that such disclosure can be made without directly or indirectly revealing the amount of credit available to any
19  [Enr. Com. Sub. for S. B. No. 173

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

254   (1) More than $1.00, but not more than $50,000;
255   (2) More than $50,000 but not more than $100,000;
256   (3) More than $100,000 but not more than $250,000;
257   (4) More than $250,000 but not more than $500,000;
258   and
259   (5) More than $500,000 but not more than $1,000,000.

260 (h) Report by the governor's office of community
261 and industrial development. — The governor's office
262 of community and industrial development shall pro-
263 duce a report to the Legislature to be presented during
264 the regular legislative session of one thousand nine
265 hundred ninety-two. Such report shall state the
266 identity of taxpayers who have received this manage-
267 ment information services facility credit, and shall
268 contain an analysis of the expansion and growth of
269 management information services facilities in the state
270 of West Virginia, the expansion of commerce resulting
271 from the creation of this credit, and the number of
272 jobs created as a result of this credit. The report of the
273 governor's office of community and industrial develop-
274 ment shall not directly or indirectly reveal the amount
275 of credit available to any particular taxpayer or
276 taxpayer return information other than the names and
277 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:

<table>
<thead>
<tr>
<th>If useful life or applicable lease term is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 yrs. or more but less than 6 yrs. .......</td>
<td>33-1/3%</td>
</tr>
<tr>
<td>6 yrs. or more but less than 8 yrs. .......</td>
<td>66-2/3%</td>
</tr>
<tr>
<td>8 yrs. or more ..................................</td>
<td>100%</td>
</tr>
</tbody>
</table>

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
property is damaged or destroyed by fire, flood, storm
or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

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

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

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

(4) Property purchased for multiple use. — Investment in property purchased for use in a management information services facility together with some other use shall not qualify for purposes of this credit.

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

(6) Specific exclusions. —

(A) Investment in land or buildings, whether purchased or leased, shall not qualify for purposes of this management information services facility credit.

(B) Investment by purchase or lease in natural resources in place; and investment by purchase or lease in property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use, shall not qualify for purposes of this management information services facility credit.
(C) Investment in property purchased, or leased, or placed in service or use prior to the first day of April, one thousand nine hundred ninety-one, or after the thirty-first day of March, one thousand nine hundred ninety-three, shall not qualify for purposes of this management information services facility credit.

(D) Investment in property not purchased, or leased, either for the purpose of expanding an existing management information services facility in West Virginia pursuant to a national, regional or international relocation or consolidation of significant management information services in West Virginia; or for the purpose of establishing in this state a management information services facility that is new to West Virginia, shall not qualify for purposes of this management information services facility credit.

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

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

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

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


(a) Mere change in form of business. — Property shall not be treated as disposed of under section six of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a similar industrial business or management information services business activity in this state and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the industrial facility or facilities transferred or to the eligible research and development project or management information services facility, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor. — Provided that the tax commissioner gives prior approval for a transfer or sale, property shall not be treated as disposed of under section six by reason of any transfer or sale to a successor business which continues to operate the industrial facility or management information services facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each taxable year subsequent to the taxable year of the transferor during which the transfer occurred, and, for the year of transfer, an amount of annual credit for such year in the same proportion as the number of days remaining in the transferor’s taxable year bears to the total number of days in such taxable year, and
the taxpayer (transferor) shall not be required to
redetermine the amount of credit allowed in earlier
years. In determining whether or not to approve a
disposition pursuant to this subsection, the tax com-
mmissioner shall take into account the legislative
findings and purpose contained in section one of this
article in making such decision.

ARTICLE 15. CONSUMERS SALES TAX.
1 For the purpose of this article:
2 (a) "Persons" means any individual, partnership,
association, corporation, state or its political subdivi-
sions or agency of either, guardian, trustee, committee,
executor or administrator.
3 (b) "Tax commissioner" means the state tax
commissioner.
4 (c) "Gross proceeds" means the amount received in
money, credits, property or other consideration from
sales and services within this state, without deduction
on account of the cost of property sold, amounts paid
for interest or discounts or other expenses whatsoever.
Losses shall not be deducted, but any credit or refund
made for goods returned may be deducted.
5 (d) "Sale", "sales" or "selling" includes any transfer
of the possession or ownership of tangible personal
property for a consideration, including a lease or
rental, when the transfer or delivery is made in the
ordinary course of the transferor's business and is
made to the transferee or his agent for consumption or
use or any other purpose.
6 (e) "Vendor" means any person engaged in this state
in furnishing services taxed by this article or making
sales of tangible personal property.
7 (f) "Ultimate consumer" or "consumer" means a
person who uses or consumes services or personal
property.
8 (g) "Business" includes all activities engaged in or
caused to be engaged in with the object of gain or
economic benefit, direct or indirect, and all activities
of the state and its political subdivisions which involve
sales of tangible personal property or the rendering of
services when those service activities compete with or
may compete with the activities of other persons.

(h) “Tax” includes all taxes, interest and penalties
levied hereunder.

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

(j) “Purchaser” means a person who purchases
tangible personal property or a service taxed by this
article.

(k) “Personal service” includes those:

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

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

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

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

(n) (1) “Directly used or consumed” in the activities
of manufacturing, transportation, transmission, com-
munication or the production of natural resources
means used or consumed in those activities or opera-
tions which constitute an integral and essential part of
such activities, as contrasted with and distinguished
(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes only:

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

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

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

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

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

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

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

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communica-
(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

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

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

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

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

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

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

(A) Heating and illumination of office buildings;
(B) Janitorial or general cleaning activities;
(C) Personal comfort of personnel;
(D) Production planning, scheduling of work, or inventory control;
(E) Marketing, general management, supervision, finance, training, accounting and administration; or
(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of such activities.

(o) "Contracting".

(1) In general. — "Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property.

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

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

(A) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property, or which adds utility to real property or any part thereof, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.
(B) The term “alteration” means, and is limited to, alterations which are capital improvements to a building or structure or to real property.

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

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

(E) The term “improvement” means, and is limited to, improvements which are capital improvements to a building or structure or to real property.

(F) The term “capital improvement” means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property or any part thereof and that last, or are intended to be relatively permanent. As used herein, “relatively permanent” means lasting at least a year or longer in duration without the necessity for regularly scheduled recurring service to maintain such capital improvement. “Regular recurring service” means regularly scheduled service intervals of less than one year.

(G) Contracting does not include the furnishing of work, or both materials and work in the nature of hookup, connection, installation or other services if such service is incidental to the retail sale of tangible personal property from the service provider’s inventory: Provided, That such hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant hereto include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian
blinds, canvas awnings, free standing industrial or
tangible personal property. Repairs made to the
foregoing are within the definition of contracting if
such repairs involve permanently affixing to or
improving real property or something attached thereto
which extends the life of the real property or some-
thing affixed thereto or allows or is intended to allow
such real property or thing permanently attached
thereto to remain in service for a year or longer.

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

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

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

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

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

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

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

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

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

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

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

(2) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(3) A corporation or organization which annually
receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;

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

(5) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America, or the YMCA Indian guide/princess program, and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(6) For purposes of this subsection:

(A) The term “support” includes, but is not limited to:

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

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

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

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

(v) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of such organization; and
(vi) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;

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

(C) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization; or

(7) The exemption allowed by this subsection (f) does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subsection as amended by this act shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed in the activities for which such organizations qualify as tax exempt organizations under the Internal Revenue Code by these organizations and shall not apply to purchases of gasoline or special fuel;

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

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

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

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

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

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

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

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

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

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

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

(w) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not
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 Septem-
294 ber, 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 serv-
307 ices" means: (1) The processing of another's data,
308 including all processes incident to processing of data
309 such as keypunching, keystroke verification, rearrang-
310 ing or sorting of previously documented data for the
311 purpose of data entry or automatic processing, and
312 changing the medium on which data is sorted,
313 whether these processes are done by the same person
314 or several persons; and (2) providing access to com-
315 puter equipment for the purpose of processing data or
316 examining or acquiring data stored in or accessible to
317 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
agent into real property, or into a building or structure which is or will be used as permanent low-income housing, transitional housing, emergency homeless shelter, domestic violence shelter or emergency children and youth shelter if such shelter is owned, managed, developed or operated by an organization qualified under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(cc) Dispensing of services performed by one corporation for another corporation when both corporations are members of the same controlled group. Control means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation entitled to vote or ownership, directly or indirectly, of stock possessing fifty percent or more of the value of the corporation;

(dd) Food for the following shall be exempt:

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

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

(3) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;
(4) Food sold in an occasional sale by a charitable or nonprofit organization including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose;

(5) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on such functions and activities. Provided, That purchases made by such organizations shall not be exempt as a purchase for resale;

(ee) Sales of food by little leagues, midget football leagues, youth football or soccer leagues and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups. Provided, That such purchases made by such organizations shall not be exempt as a purchase for resale;

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

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

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

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

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

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

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

(mm) Sales of aircraft repair, remodeling and maintenance services when such services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a
governmental entity, as part of the repair, remodeling
or maintenance service and sales of machinery, tools,
or equipment, directly used or consumed exclusively
in the repair, remodeling, or maintenance of aircraft,
aircraft engines, or aircraft component parts, for a
certificated or licensed carrier of persons or property,
or for a governmental entity; and

(nn) Sales of tangible personal property and services
to a person entitled to claim the tax credit for investment in certain management information services
facilities allowed under section three-c, article
thirteen-d of this chapter, pursuant to the issuance of
a management information services tax credit certification by the tax commissioner in accordance with
subsection (e), section three-c, article thirteen-d of this
chapter, when such property or services are directly
used or consumed by the purchaser in the operation of
the management information services facility, as
defined in section two of this article for which credit
is allowed under section three-c, article thirteen-d of
this chapter. Tangible personal property, or services,
directly used or consumed in the operation of a
management information services facility includes
only: (1) Computer processing and telecommunications
equipment; (2) data storage and input/output devices;
(3) disaster recovery services; (4) supplies; (5) application, telecommunication and operating system software; (6) repair and maintenance of any of the
aforesaid items; and (7) other tangible personal property or services directly used or consumed in the
operation of a management information services
facility: Provided, That the property is purchased or
leased after the thirty-first day of March, one thousand nine hundred ninety-one. This exemption shall
not apply to tangible personal property, or services,
that are not directly used or consumed in the operation
of a management information services facility, or
to gasoline or special fuel: Provided, however, That
nothing in this paragraph shall be construed to limit,
exclude or preclude the application or availability of
any other exemption set forth in this section, or
elsewhere in this code, which might otherwise apply
to any sale of tangible personal property or services.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of , 1991.

Governor