WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 463

(By Senator Craige)

PASSED April 10, 1993
In Effect 90 days from Passage
ENROLLED

Senate Bill No. 463

(BY SENATOR CRAIGO)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article nine, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section three, article twelve-b of said chapter; to amend and reenact section two, article thirteen-a of said chapter; to amend and reenact section five, article thirteen-c of said chapter; to further amend said article by adding thereto a new section, designated section fifteen; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-e; to amend and reenact sections two and nine, article fifteen of said chapter; to amend and reenact section twelve, article twenty-one of said chapter; to further amend said article by adding thereto a new section, designated section seventy-seven; to amend and reenact section nine, article twenty-three of said chapter; to amend and reenact sections six and thirteen, article twenty-four of said chapter; to amend article nine-a, chapter sixteen of said code by adding thereto a new section, designated section six; to amend and reenact sections four, five, six, six-a, twelve, fifteen,
sixteen and twenty-four, article twenty, chapter forty-seven of said code; to further amend said article by adding thereto two new sections, designated section twelve-a and twenty-eight-a; to amend and reenact sections seven, fifteen and twenty-two, article twenty-one of said chapter; and to further amend said chapter by adding thereto a new article, designated article twenty-three, all relating to revenue enhancements; providing expanded application of the crimes and penalties provisions relating to taxation; creating a criminal investigation section within the department of tax and revenue; providing for a reduction in the amount of authorized credits under the West Virginia capitol company act; by increasing the alternative minimum severance tax on coal by twenty-five cents; reduction in gross value for amount of federal energy tax; reducing the amount of super credit that may be taken in remaining years by adding three years to the remaining period; prohibiting the use of credits against sales and use tax liability; providing a one year suspension of the business investment and jobs expansion tax credit, also known as the super credit; requiring the commission to prepare a report recommending a replacement credit to the Legislature; eliminating the sales tax exemption for contractor engaging in repaving, repair or maintenance of bridges or highways; eliminating the indirect use sales tax exemption; and providing definitions of directly used and consumed; subjecting lottery winnings to personal income tax; subjecting lottery winnings of a certain amount to withholding; extending the due date of business franchise and corporate net income tax returns filed by certain tax exempt organizations; prohibiting any net operating loss from being carried back to any previous taxable year; requiring the amount of depreciation, amortization or cost depletion to be added back into the amount of taxable income for persons asserting specified credits; providing an age limitation on persons permitted to play bingo; changing the fee of super bingo license; limiting the payment of compensation to persons conducting bingo occasions; increasing the percentage of proceeds used for expenses; requiring specified records
and reports, requiring bingo operators to designate nonsmoking sections; changing the license fee for charitable raffles; allowing payment of certain expenses; requiring the filing of reports for charitable raffles; imposing a license fee on charitable raffle boards and games; requiring stamp to be affixed to charitable raffle boards and games; requiring wholesaler to pay fee; providing criminal penalties for failure to file a return; allowing forfeitures of vehicles and vessels upon illegal transportation of charitable raffle boards and games; authorizing promulgation of legislative rules; providing a severability clause; and providing for general procedure and administration.

Be it enacted by the Legislature of West Virginia:

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

**CHAPTER 5E. VENTURE CAPITAL COMPANY.**

**ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**

§5E-1-8. Tax credits.

1. (a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to rule of the authority.

2. (b) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: *Provided,* That for the fiscal year beginning the first day of July, one thousand nine hundred ninety-two, the total credits authorized by the authority for all companies under this section or this article may not exceed a total of eight million dollars each fiscal year: *Provided, however,* That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-three, and the fiscal year one thousand nine hundred ninety-four, the total credits authorized for all companies under this article may not exceed a total of five million dollars: *Provided further,* That for the fiscal year beginning the first day of July, one thousand nine hundred ninety-three, and for each fiscal year thereafter, the authority shall, for the first one hundred eighty days of the fiscal year, accept applications only from companies who certify in their application that the investment of its entire capital base will be in one or more small business investment corporations organized under the small business investment act: *And provided further,* That the capital base of any such qualified company shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies in the order that said companies are qualified.
(c) Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), section five, article thirteen-c of said chapter. The credit for investments by a partnership or by a corporation electing to be treated as a Subchapter S corporation may be divided pursuant to election of partners or shareholders.

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full, or until forfeited: Provided, That: (i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted under this article for any tax year beginning on or
after the first day of January, one thousand nine hundred ninety-one. 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;
(5) More than $500,000, but not more than $1,000,000;
(6) More than $1,000,000.

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

(a) The provisions of this article shall apply to the following taxes imposed by this chapter: (1) The inheritance and transfer taxes and estate taxes imposed by article eleven of this chapter; (2) the business franchise registration tax imposed by article twelve of this chapter; (3) the annual tax on incomes of certain carriers imposed by article twelve-a of this chapter; (4) the business and occupation tax imposed by article thirteen of this chapter; (5) the gasoline and special fuels excise tax imposed by article fourteen of this chapter; (6) the motor carrier road tax imposed by article fourteen-a of this chapter; (7) the consumers sales and service tax imposed by article fifteen of this chapter; (8) the use tax imposed by article fifteen-a of this chapter; (9) the cigarette tax imposed by article seventeen of this chapter; (10) the soft drinks tax imposed by article nineteen of this chapter; (11) the personal income tax imposed by article twenty-one of this chapter; and (12) the corporation net income tax imposed by article twenty-four of this chapter.

(b) The provisions of this article shall also apply to the West Virginia tax procedure and administration act in article ten of this chapter, and to any other articles of this chapter when such application is expressly provided for by the Legislature.
(c) The provisions of this article shall also apply to the charitable bingo fee imposed by sections six and six-a, article twenty, chapter forty-seven of this code; the charitable raffle fee imposed by section seven, article twenty-one of said chapter; and the charitable raffle boards and games fees imposed by section three, article twenty-three of said chapter.

(d) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a), (b) and (c) of this section, with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

§11-9-2a. Criminal investigation section established; funding of same.

A criminal investigation section consisting of no more than ten investigators plus necessary support staff is hereby established within the state tax division for the purpose of assuring compliance with laws, rules and regulations pertaining to the taxes or credits established by articles eleven, eleven-a, eleven-b, twelve, twelve-a, twelve-b, thirteen, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, fourteen, fourteen-a, fifteen, fifteen-a, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four and twenty-six of this chapter, and articles twenty, twenty-one and twenty-three, chapter forty-seven of this code. Charitable bingo fees imposed under sections six and six-a, article twenty of said chapter; charitable raffle fees imposed under section seven, article twenty-one of said chapter; and charitable raffle boards and games fees imposed under section three, article twenty-three of said chapter shall be deposited in a special revenue account established in the office of the treasurer and shall be used to support compliance expenditures relating to the establishment, maintenance and support of such criminal investigation section. At the close of the fiscal year, any moneys in the special revenue account in excess of twenty thousand dollars shall be transferred to the general revenue fund.
Any employee of the criminal investigation section so designated by the tax commissioner who shall have a background in accounting and who shall be certified as a law-enforcement officer pursuant to article twenty-nine, chapter thirty of this code, or its equivalent, shall have all the lawful powers delegated to members of the department of public safety except the power to carry firearms to enforce the provisions of this article in any county or municipality of this state. The commissioner shall establish such additional standards as he or she deems applicable or necessary. Any such employee shall, before entering upon the discharge of his or her duties, execute a bond with security in the sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his or her duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his or her office. The department of public safety, any county sheriff, or deputy sheriff, or any municipal police officer, upon request by the tax commissioner, is hereby authorized to assist the tax commissioner in enforcing the provisions of this article and the criminal penalty provisions of this article or any article of this chapter administered under this article.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-3. Imposition of tax, credit.

(a) Imposition of tax. — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use there is hereby imposed an annual minimum severance tax equal to fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use during the taxable year: Provided, That for taxable years ending after the thirty-first day of May, one thousand nine hundred ninety-three, the minimum severance tax imposed on coal produced by the taxpayer for sale, profit or commercial use for such taxable year shall be seventy-five cents, with such rate increase to apply
only to tons of coal produced after the thirty-first day of May, one thousand nine hundred ninety-three.

(b) Credit against article thirteen-a tax. — A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on coal by section three, article thirteen-a of this chapter, but not including the additional severance tax on coal imposed by section six of said article, equal to the liability of the taxpayer for the taxable year for payment of the minimum severance tax on coal imposed by this article: Provided, That the amount of credit allowed by this section shall not exceed the severance tax liability of the taxpayer for the taxable year determined under paragraph (1), subsection (b), section three of said article exclusive of the additional tax on coal imposed by section six of said article after application of all credits to which the taxpayer may be entitled except any credit allowed pursuant to chapter five-e of this code any credit for installment payments of estimated tax paid pursuant to section six of this article during the tax year and any credit for overpayment of article thirteen-a tax. Notwithstanding anything herein to the contrary, in no event shall the credit allowed under chapter five-e of this code be allowed as a credit against the minimum severance tax imposed by this article.

ARTICLE 13A. SEVERANCE TAXES.


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

(b) Terms defined. —

(1) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) "Delegate" in the phrase "or his or her delegate", when used in reference to the tax commission-
er, means any officer or employee of the state tax
department duly authorized by the tax commissioner
directly, or indirectly by one or more redelegations of
authority, to perform the function mentioned or
described in this article or regulations promulgated
thereunder.

(3) “Economic interest” for the purpose of this
article is synonymous with the economic interest
ownership required by Section 611 of the Internal
Revenue Code in effect on the thirty-first day of
December, one thousand nine hundred eighty-five,
entitling the taxpayer to a depletion deduction for
income tax purposes: Provided, That a person who
only receives an arm’s length royalty shall not be
considered as having an economic interest.

(4) “Extraction of ores or minerals from the ground”
includes extraction by mine owners or operators of
ores or minerals from the waste or residue of prior
mining.

(5) “Fiduciary” means and includes, a guardian,
trustee, executor, administrator, receiver, conservator
or any person acting in any fiduciary capacity for any
person.

(6) “Gross value” in the case of natural resources
means the market value of the natural resource
product, in the immediate vicinity, where severed,
determined after application of post production pro-
cessing generally applied by the industry to obtain
commercially marketable or usable natural resource
products. For all natural resources, “gross value” is to
be reported as follows:

(A) For natural resources severed or processed (or
both severed and processed) and sold during a report-
ing period, gross value is the amount received or
receivable by the taxpayer.

(B) In a transaction involving related parties, gross
value shall not be less than the fair market value for
natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the
fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of the natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processing natural resources of similar grade and quality reduced by the fair market value of the natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the amount of any federal energy tax imposed upon the taxpayer after the first day of June, one thousand nine hundred ninety-three, but shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.
(H) For limestone or sandstone quarried or mined, gross value is the value of such stone immediately upon severance from the earth.

(7) “Mining” includes not merely the extraction of ores or minerals from the ground but also those treatment processes considered as mining under this article and those treatment processes necessary or incidental thereto.

(8) “Natural resource” means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state, and includes standing timber.

(9) “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which natural resources are severed, extracted, reduced to possession and produced or prepared in this state for sale, profit or commercial use. “Partner” includes a member of such a syndicate, group, pool, joint venture or organization.

(10) “Person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(11) “Processed” or “processing” as applied to:

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(12) “Related parties” means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if
a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(13) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(14) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth: Provided, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(15) "Stock" includes shares in an association, joint-stock company or corporation.

(16) "Tax commissioner" means the tax commissioner of the state of West Virginia, or his delegate.

(17) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(18) "Taxpayer" means and includes any individual,
partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest therein is the taxpayer.

(19) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(20) "This state" means the state of West Virginia.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-5. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of the following as modified under subsections (o) and (p) of this section:

(1) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during a prior taxable year; plus

(2) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during the current taxable year; plus

(3) The one-tenth part allowed under section four-a of this article for locating corporate headquarters in this state; or the amount allowed under section seven-a of this article of the taxable year.

(b) Application of current year annual credit allowance. — The amount determined under subsection (a) of this section shall be allowed as a credit against that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's
qualified investment, and shall be applied as provided
in subsections (c) through (k), both inclusive, of this
section, and in that order.

(c) Business and occupation taxes. —

(1) That portion of the allowable credit attributable
to qualified investment in a business or other activity
subject to the taxes imposed by article thirteen of this
chapter, shall first be applied to reduce up to eighty
percent of the taxes imposed by said article for the
taxable year (determined before application of allow-
able credits against tax and the annual exemption).

(2) If the taxes due under said article thirteen are
not solely attributable to and the direct result of the
taxpayer's qualified investment in a business or other
activity taxable under article thirteen of this chapter,
the amount of such taxes, which are so attributable,
shall be determined by multiplying the amount of
taxes due under said article, for the taxable year
(determined before application of any allowable
credits against tax and the annual exemption), by a
fraction, the numerator of which is all wages, salaries
and other compensation paid during the taxable year
to all employees of the taxpayer employed in this
state, whose positions are directly attributable to the
qualified investment in a business or other activity
taxable under article thirteen of this chapter. The
denominator of the fraction shall be the wages,
salaries and other compensation paid during the
taxable year to all employees of the taxpayer
employed in this state, whose positions are directly
attributable to the business or other activity of the
taxpayer, that is taxable under said article.

(3) The annual exemption allowed by section three
of said article thirteen of this chapter, plus any credits
allowable under articles thirteen-d and thirteen-e of
this chapter, shall be applied against and reduce only
the portion of article thirteen taxes not apportioned to
the qualified investment under this article: Provided,
That any excess exemption or credits may be applied
against the amount of article thirteen taxes appor-
tioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(d) Carrier income taxes.

(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article twelve-a of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article, for the taxable year.

(2) If the taxes due under article twelve-a of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year, by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(e) Severance taxes.

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the tax imposed by article thirteen-a of this chapter, and qualified investment in a business or activity that was subject to the tax imposed by article thirteen of this chapter prior to said first day of July, but on and after said
first day of July, is subject to the tax imposed by article thirteen-a of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of any allowable credits against tax).

(2) If the taxes due under article thirteen-a of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article thirteen-a of this chapter, the amount of such taxes which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter shall be applied against and reduce only the portion of article thirteen-a taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(f) **Telecommunications taxes.** —

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a
business or other activity subject to the taxes imposed by article thirteen-b of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of allowable credits against tax) and qualified investment in a business or activity that was subject to the taxes imposed by article twelve-a of this chapter prior to said first day of July, but on and after said first day of July is subject to the tax imposed by article thirteen-b of this chapter.

(2) If the taxes due under article thirteen-b are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(g) Business franchise tax. —

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or activity subject to the taxes imposed by article twenty-three of this chapter, and qualified investment in a business or activity that was subject to the taxes imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article twenty-three of this chapter, shall first be applied to reduce up to eighty percent of the taxes
imposed by said article for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(2) If the taxes due under article twenty-three of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter shall be applied against and reduce only the portion of article twenty-three taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article twenty-three taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(h) Corporation net income taxes. —

(1) After application of subsections (c) through (g), both inclusive of this section, any unused credit shall next be applied to reduce up to eighty percent of the taxes imposed by article twenty-four of this chapter,
for the taxable year (determined before application of allowable credits against tax).

(2) If the taxes due under article twenty-four of this chapter (determined before application of allowable credits against tax) are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such taxes which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(3) Any credits allowable under article twenty-four of this chapter shall be applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(i) Personal income taxes. —

(1) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1954, as amended), a partnership or a sole proprietorship, then any unused credit (after application of subsections (c), (d), (e), (f) and (g) shall be allowed as a credit against up to eighty percent of the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twelve-a, thirteen, thirteen-a, thir-
(2) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax) that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship, the amount of such taxes which are so attributable shall be determined by multiplying the amount of taxes due under said article (determined before application of allowable credits against tax), that is attributable to business by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer.

(4) No credit shall be allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

(j) For tax years beginning after the thirty-first day of December, one thousand nine hundred ninety-two, and thereafter, if the formula provisions of subsections (c) through (i) of this section, inclusive, do not fairly represent the taxes solely attributable to and the direct result of the taxpayer's qualified investment of the taxpayer and all other project participants in the business or other activity subject to tax, the commissioner may require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:
(1) Separate accounting or identification; or
(2) Adjustment to the wages formula to reflect all components of the tax liability; or
(3) The inclusion of one or more additional factors which will fairly represent the taxes solely attributable to and the direct result of the qualified investment of the taxpayer and all other project participants in the businesses or other activities subject to tax; or
(4) The employment of any other method to effectuate an equitable attribution of the taxes.

In order to effectuate the purposes of this subsection, the commissioner shall propose for promulgation legislative rules in accordance with article three, chapter twenty-nine-a of this code: Provided, That the initial promulgation may be by emergency rule. The rule shall set forth the standards by which this subsection will be implemented and enforced: Provided, however, That with regard to investment placed in service prior to the passage of this provision, taxpayers having a specific written determination from the tax commissioner that the taxpayer is authorized or required to take credit against tax not attributable to qualified investment shall not be subject to the alternative allocation of credit provided for under this subsection.

(k) Sales and use taxes.

On and after the first day of July, one thousand nine hundred eighty-seven, for purchases of tangible personal property and taxable services made on or after that date, that portion of the allowable credit, which is attributable to qualified investment in a business or activity subject to the taxes imposed by articles fifteen and fifteen-a of this chapter on purchases for use or consumption in the conduct of such business or activity, shall be applied to reduce up to eighty percent of the taxes imposed by said articles on purchases that are directly used or consumed in the qualified investment activity. When property and services purchased for use or consumption are not solely used or con-
sumed in the qualified investment activity, the cost thereof shall be apportioned between such activities. Only that amount apportioned to purchases directly used or consumed in the qualified investment activity shall be included when applying the credit allowable under this subsection. On and after the first day of July, one thousand nine hundred ninety-three, for purchases of tangible personal property and taxable services made on or after that date for use or consumption in the conduct of business, no portion of the allowable credit may be applied against the taxes imposed by said articles.

(1) Ad valorem property taxes; unemployment taxes and workers' compensation premiums. —

(1) After application of subsections (a) through (i), both inclusive, of this section, any unused credit shall be applied as a rebate for payment of the sum of the following amounts:

(A) Eighty percent of the ad valorem property taxes imposed by levying bodies pursuant to article eight of this chapter, for the taxable year (including payments in lieu of such taxes), on property of the taxpayer that is directly attributable to the qualified investment (including property having a useful life of less than four years) of the taxpayer, in the new or expanded business facility of the taxpayer resulting in new jobs; plus

(B) Eighty percent of the taxes imposed by article five, chapter twenty-one-a of this code for the taxable year attributable to the compensation of new employees filling the new jobs that are directly attributable to the qualified investment; plus

(C) Twenty percent of the workers' compensation premiums imposed by article two, chapter twenty-three of this code, for the taxable year attributable to the compensation paid new employees filling the new jobs, that are directly attributable to the qualified investment.

(2) A taxpayer eligible to claim this rebate shall
apply either the amount of the unused credit or the sum determined under subdivision (1) of this subsection, whichever is less, against the remaining twenty percent of the taxes imposed by articles twelve-a, thirteen, thirteen-a, twenty-one, twenty-three and twenty-four of this chapter, attributable to the qualified investment under this article. If any amount of rebate remains after its application against the remaining twenty percent of taxes as aforesaid, the amount remaining shall be carried forward to each ensuing tax year until used or the expiration of the twelfth subsequent tax year in which the qualified investment was placed in service or use in this state by the taxpayer.

(m) Unused credit forfeited. — If any credit remains after application of subsection (b) of this subsection, the amount thereof shall be forfeited. No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance, except as specifically provided in subsection (l), (o) or (p) of this section.

(n) Notwithstanding any provision of this section to the contrary and notwithstanding the reenactment of this section later in time than the enactment or reenactment of section fourteen of this article, the restrictions, limitations, constraints and provisions of said section shall apply to and supersede the provisions of this section.

(o) Deferral of twenty percent of annual credit, eighty percent current limitation. —

(1) Eighty percent of the amount of annual credit calculated under subsections (a) through (n) of this section before application of the minimum severance tax against coal and before the adjustment set forth in subsection (p) of this section, shall be applied against the taxes enumerated in subsections (c) through (i), inclusive, of this section for the current tax year.

(2) The remaining twenty percent of such annual credit so calculated in subsections (c) through (n) of
this section shall be applied against the taxes enumerated in subsections (c) through (i), inclusive, of this section beginning in the tenth tax year subsequent to the tax year in which qualified investment was first placed in service or use in this state by the taxpayer, and the amount thereof remaining shall be carried forward each ensuing tax year until used or until the expiration of the twelfth tax year subsequent to the tax year in which qualified investment was first placed in service or use in this state by the taxpayer. No deferral of credit under this subsection shall apply to this credit when applied in such tenth through twelfth years.

(p) Additional allowance. —

(1) After application of up to eighty percent of annual credit against the taxes enumerated in subsections (c) through (i), inclusive, of this section for the current tax year under subsection (o) of this section, there shall be allowed an additional amount of credit, as determined under subdivision (2) of this subsection, which may offset up to one hundred percent of the remaining taxes enumerated in subsections (g), (h) and (i), in that order, of this section for the current tax year. Any credit calculated and determined under this subsection which remains after application against the taxes enumerated in subsections (g), (h) and (i) under this subsection shall be forfeited and shall not carryover to any other taxable year.

(2) The amount of credit allowable under this subsection shall be the lesser of one third of the taxpayer's minimum severance tax on coal payable, or the taxpayer's net minimum severance tax on coal payable. For purposes of this subsection, the term "net minimum severance tax on coal payable" means the amount of the excess of the minimum severance tax on coal over the amount of the state severance tax on coal severed and extracted by the taxpayer in this state not including the additional severance tax on coal imposed by section six, article thirteen-a of this chapter, calculated after application of the credit allowed under this article, and before application of all
other credits, and after application of the five hundred dollar exemption to the said severance tax on coal.

(q) **Effective date.** —

(1) This section, as amended in the year one thousand nine hundred eighty-six, shall be effective upon passage. It shall be retroactive, and shall be in lieu of the method provided by this section for application of this credit prior to this amendment, for qualified investment made on or after the first day of March, one thousand nine hundred eighty-five.

(2) This section as amended in the year one thousand nine hundred eighty-seven, shall be effective for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven.

(3) This section as amended in the year one thousand nine hundred ninety-three, shall be effective for taxable years ending after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-13C-15. **One year suspension of new credit entitlements, exceptions, effective date.**

(a) Notwithstanding any other provision of this article to the contrary, no entitlement to the business investment and jobs expansion tax credit under this article shall result from, and no credit shall be available to any taxpayer for, investment placed in service or use during the period beginning on the date of passage of this section by the Legislature, and ending on the three hundred and sixty sixth day thereafter.

(b) The suspension of new entitlements to credits set forth in subsection (a) of this section shall not apply to companies, entities or taxpayers engaged in the following industries or business activities:

(1) Manufacturing, including, but not limited to, chemical processing and chemical manufacturing, manufacture of wood products and forestry products, manufacture of aluminum, manufacture of paper, paper processing, recyclable paper processing, food
processing, manufacture of aircraft or aircraft parts, manufacture of automobiles or automobile parts, and all other manufacturing activities, but not timbering or timber severance or timber hauling, or mineral severance, hauling, processing or preparation, or coal severance, hauling, processing or preparation;

(2) Information processing, including, but not limited to, telemarketing, information processing, systems engineering, backoffice operations and software development;

(3) The activity of warehousing, including, but not limited to, commercial warehousing and the operation of regional distribution centers by manufacturers, wholesalers or retailers;

(4) The activity of goods distribution;

(5) Destination oriented recreation and tourism.

(c) Notwithstanding the fact that a company, entity or taxpayer is engaged in an industry or business activity enumerated in subsection (b) of this section, such company, entity or taxpayer must qualify for the business investment and jobs expansion tax credit by fulfilling the qualified investment, jobs creation and other credit entitlement requirements of the business investment and jobs expansion tax credit act in order to obtain entitlement to any credit under this article. Failure to fulfill the statutory requirements of the business investment and jobs expansion tax credit act will result in a partial or complete loss of the tax credit.

(d) Transition rule. — Notwithstanding any provision herein contained to the contrary, this section shall not apply to investments for which applications for credit or applications for projected certification were filed prior to the effective date of this section.

(e) Effective date. — This section shall be effective upon passage by the Legislature.

(f) Reports to the Legislature. — On or before the fifteenth day of January, one thousand nine hundred
ninety-four, the secretary of the department of tax
and revenue shall submit a report to the governor, the
president of the Senate and the speaker of the House
of Delegates. The report shall include recommenda-
tions regarding a tax credit to promote economic
development to replace the business investment and
jobs expansion credit provided pursuant to this article.
The recommended replacement credit should provide
for a maximum amount of total credit which may be
taken by all taxpayers in any one year so that the total
fiscal impact of the credit to the state can be readily
determined. The secretary shall consult with all other
state agencies that are responsible for economic
development in this state and include any recommen-
dations forthcoming from those agencies in the report.

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


1 Notwithstanding any other provision of this code to
the contrary, for taxable years ending on and after the
first day of July, one thousand nine hundred ninety-
three, the credits allowed under section three may not
be applied to reduce the taxes imposed by articles
fifteen and fifteen-a of this chapter: Provided, That
this section shall not apply to credits allowed under
subsection (g), section three of this article for qualified
housing development projects existing in this state on
or before the first day of July, one thousand nine
hundred ninety-two.

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR
COAL LOADING FACILITIES.


1 Notwithstanding any other provision of this code to
the contrary, for taxable years ending on and after the
first day of July, one thousand nine hundred ninety-
three, the credits allowed under section three may not
be applied to reduce the taxes imposed by articles fifteen and fifteen-a of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.


For the purpose of this article:

(a) "Persons" means any individual, partnership, association, corporation, state or its political subdivisions or agency of either, guardian, trustee, committee, executor or administrator.

(b) "Tax commissioner" means the state tax commissioner.

(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.

(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.

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

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

(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, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

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

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

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

(K) Maintenance or repair of property, including maintenance equipment, 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, 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 commercial equipment and other similar items of 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 something 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 transmission 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, processing and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.
(u) "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.

(v) "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.

(w) (1) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business, means used or consumed in those activities or operations which constitute an integral and essential part of such activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production
of sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(A) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(B) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and such vehicles and their equipment as are specifically designed and equipped for such purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(C) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power, appliance, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices.

(D) Tangible personal property or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric
power, the provision of a public utility service, or the
operation of a utility business.

(E) Tangible personal property or services used
immediately in pollution control or environmental
quality or protection activity or community safety or
security directly relating to the activities of gas
storage, generation or production or sale of electric
power, the provision of a public utility service or the
operation of a utility business.

(3) Uses of property or services which would not
constitute direct use or consumption in the activities of
gas storage, generation or production or sale of electric
power, the provision of a public utility service or the
operation of a utility business include, 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 the activities of gas storage, generation or produc-
tion or sale of electric power, the provision of public
utility service or the operation of a utility business.

(x) "Gas storage" means the injection of gas into a
storage reservoir, or the storage of gas for any period
of time in a storage reservoir, or the withdrawal of gas
from a storage reservoir, engaged in by businesses
subject to the business and occupation tax imposed by
sections two and two-e, article thirteen, chapter eleven
of this code.

(y) "Generating or producing or selling of electric
power" means the generation, production or sale of
electric power engaged in by businesses subject to the
business and occupation tax imposed by sections two,
two-d, two-m or two-n, article thirteen, chapter eleven of this code.

(z) "Providing a public service or the operating of a utility business" means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.


The following sales and services are exempt:

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

(b) Sales of textbooks required to be used in any of the schools of this state or in any institution in this 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 subdivision 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 article 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 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 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: Provided, however, That on and after the first day of May, one thousand nine hundred ninety-three, 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, production of natural resources, gas storage, generation or production of selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named above and shall not apply to purchases of gasoline or 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: Provided, however, that nails and fencing shall not be considered as improvements to real property;

(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 incorpo-
rates 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 promul-
gate 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 contrac-
tors 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
work: Provided, That sales of gasoline and special fuel
shall be taxable;

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

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

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

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

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

(q) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subsection (f) of this section on its purchases of tangible personal property or services:

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

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

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

(x) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

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

(z) Tuition charged for attending educational summer camps;

(aa) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, 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;

(bb) 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;

(cc) 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;

(dd) 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;
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;

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

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;

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;

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

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;

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;

(ii) Sales of aircraft repair, remodeling and mainte-
nance 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 mainte-
nance service and sales of machinery, tools, or equip-
ment, directly used or consumed exclusively in the
repair, remodeling, or maintenance of aircraft, aircraft
generators, or aircraft component parts, for a certificated
or licensed carrier of persons or property, or for a
governmental entity;

(mm) Sales of tangible personal property and servi-
ces to a person entitled to claim the tax credit for
investment in certain management information servi-
ces facilities allowed under section three-c, article
thirteen-d of this chapter, pursuant to the issuance of
a management information services tax credit certifi-
cation by the tax commissioner in accordance with
subsection (e) of said section, when such property or
services are directly used or consumed by the purchas-
er 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 oper-
ating 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;

(nn) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(oo) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby sitting services does not exceed five thousand dollars in a taxable year; and

(pp) A corporation or organization which is a not-for-profit entity which charges membership dues utilized for and contributing significantly to traffic and pedestrian safety and education programs whether or not the corporation or organization is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) General. — The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifica-
(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount allowed as a deduction from federal gross income under Section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(7) The deferral value of certain income that is not...
recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under Section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property — no modification; five-year property — ten percent; ten-year property — fifteen percent; fifteen-year public utility property — twenty-five percent; and fifteen-year real property — thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and

(8) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;
(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to forty percent of such portion of the gain: Provided further, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received
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under any federal retirement system to which Title 4
U.S.C. §111 applies: Provided, however, That the total
modification under this paragraph shall not exceed
two thousand dollars per person receiving such retire-
ment benefits and this limitation shall apply to all
returns or amended returns filed after the last day of
December, one thousand nine hundred eighty-eight;

(6) Retirement income received in the form of
pensions and annuities after the thirty-first day of
December, one thousand nine hundred seventy-nine,
under any West Virginia police, West Virginia fire-
men's retirement system or the West Virginia depart-
ment of public safety death, disability and retirement
fund, including any survivorship annuities derived
therefrom, to the extent includible in gross income for
federal income tax purposes;

(7) Federal adjusted gross income in the amount of
eight thousand dollars received from any source after
the thirty-first day of December, one thousand nine
hundred eighty-six, by any person who has attained
the age of sixty-five on or before the last day of the
taxable year, or by any person certified by proper
authority as permanently and totally disabled, regard-
less of age, on or before the last day of the taxable
year, to the extent includible in federal adjusted gross
income for federal tax purposes: Provided, That if a
person has a medical certification from a prior year
and he is still permanently and totally disabled, a copy
of the original certificate is acceptable as proof of
disability. A copy of the form filed for the federal
disability income tax exclusion is acceptable: Provided,
however, That:

(i) Where the total modification under subdivisions
(1), (2), (5) and (6) of this subsection is eight thousand
dollars per person or more, no deduction shall be
allowed under this subdivision; and

(ii) Where the total modification under subdivisions
(1), (2), (5) and (6) of this subsection is less than eight
thousand dollars per person, the total modification
allowed under this subdivision for all gross income
received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions;

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(10) Gross income to the extent included in federal adjusted gross income under Section 86 of the Internal Revenue Code for federal income tax purposes: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(11) The amount of any lottery prize awarded by the
West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes: Provided, That for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-two, this modification shall not be made for lottery prizes awarded by the West Virginia state lottery commission.

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under section seventeen of this article.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

§11-21-77. Extension of withholding to certain lottery winnings.

(a) Lottery winnings subject to withholding. — Proceeds of more than five thousand dollars from any lottery prize awarded by the West Virginia state lottery commission shall be subject to withholding. The West Virginia state lottery commission in making any payment of a lottery prize subject to withholding shall deduct and withhold from such payment a tax in an amount equal to six and one-half percent of such payment.
(b) Statement by recipient. — Every person who is to receive payment of winnings which are subject to withholding shall furnish the person making such payment a statement made under the penalties of perjury, containing the name, address and taxpayer identification number of the person receiving the payment and each person entitled to any portion of such payment.

(c) Coordination with other sections. — For the purposes of determining liability for payment of taxes and filing of returns, payments of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

ARTICLE 23. BUSINESS FRANCHISE TAX.


(a) In general. — Every person subject to the tax imposed by this article shall make and file an annual return for the taxable year with the tax commissioner on or before:

(1) The fifteenth day of the third month of the next succeeding taxable year if the person is a corporation; or

(2) The fifteenth day of the fourth month of the next succeeding taxable year if the person is a partnership.

The annual return shall include such information as the tax commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) Special rule for tax exempt organizations with unrelated business taxable income. — Notwithstanding the provisions of subsection (a), when a business franchise tax return is required from an organization generally exempt from tax under subsection (b), section seven of this article, which has unrelated business taxable income, the annual return shall be filed on or before the fifteenth day of the fifth month following the close of the taxable year.

(c) Consolidated returns. — Any corporation that
files as part of an affiliated group for purposes of the
tax imposed by article twenty-four of this chapter
shall file a consolidated return under this article.

(d) The tax commissioner may, at his or her discre-
tion, require an affiliated group of corporations to file
a consolidated tax return under this article in order to
accurately determine the taxes due under this article.

(e) Effective date. — The amendments to this section
made in the year one thousand nine hundred ninety-
three shall apply to tax returns that become due after
the first day of that year.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable
income.

(a) General. — In determining West Virginia taxable
income of a corporation, its taxable income as defined
for federal income tax purposes shall be adjusted and
determined before the apportionment provided by
section seven of this article, by the items specified in
this section.

(b) Adjustments increasing federal taxable income.
— There shall be added to federal taxable income,
unless already included in the computation of federal
taxable income, the following items:

1. Interest or dividends on obligations or securities
of any state or of a political subdivision or authority
thereof;

2. Interest or dividends (less related expenses to the
extent not deducted in determining federal taxable
income) on obligations or securities of any authority,
commission or instrumentality of the United States
which the laws of the United States exempt from
federal income tax but not from state income taxes;

3. Income taxes and other taxes, including franchise
and excise taxes, which are based on, measured by, or
computed with reference to net income, imposed by
this state or any other taxing jurisdiction, to the extent
deducted in determining federal taxable income;
(4) The amount of unrelated business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, of a corporation which by reason of its purposes is generally exempt from federal income taxes; and

(5) The amount of any net operating loss deduction taken for federal income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended.

(c) Adjustments decreasing federal taxable income.
— There shall be subtracted from federal taxable income to the extent included therein:

(1) Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis;

(2) The amount of any refund or credit for overpayment of income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(3) The amount added to federal taxable income due to the elimination of the reserve method for computation of the bad debt deduction;

(4) The full amount of interest expense actually disallowed in determining federal taxable income which was incurred or continued to purchase or carry obligations or securities of any state or of any political subdivision thereof;

(5) The amount required to be added to federal taxable income as a dividend received from a foreign (non-United States) corporation under Section 78 of the Internal Revenue Code of 1986, as amended, by a corporation electing to take the foreign tax credit for
federal income tax purposes;

(6) The amount of salary expenses disallowed as a deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51 of the Internal Revenue Code of 1986, as amended;

(7) The amount included in federal adjusted gross income by the operation of Section 951 of the Internal Revenue Code of 1986, as amended; and

(8) Any amount included in federal adjusted gross income which is foreign source income. Foreign source income includes:

(A) Interest and dividends, other than those derived from sources within the United States;

(B) Rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties, or fees for the use of or the privilege of using without the United States any patents, copyrights, secret process and formulas, good will, trademarks, trade brands, franchises and other like properties; and

(C) Gains, profits, or other income from the sale of intangible or real property located without the United States.

In determining the source of "foreign source income", the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended, shall be applied.

(d) Net operating loss deduction. — Except as otherwise provided in this subsection, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate of: (1) The West Virginia net operating loss carryovers to such year; plus (2) the net operating loss carrybacks to such year: Provided, That no more than three hundred thousand dollars of net operating loss from any taxable year beginning after the thirty-first day of December, one thousand nine hundred ninety-two, may be carried back to any
(1) Special rules. —

(A) When the corporation further adjusts its adjusted federal taxable income under section seven of this article, the West Virginia net operating loss deduction allowed by this subsection shall be deducted after the section seven adjustments are made;

(B) The tax commissioner shall prescribe such transition regulations as he deems necessary for fair and equitable administration of this subsection as amended by this act.

(2) Effective date. — The provisions of this subsection, as amended by chapter one hundred nineteen, acts of the Legislature, one thousand nine hundred eighty-eight, shall apply to all taxable years ending after the thirtieth of June, one thousand nine hundred eighty-eight; and to all loss carryovers from taxable years ending on or before said thirtieth day of June.

(e) Special adjustments for expenditures for water and air pollution control facilities. —

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities or air pollution control facilities as defined in Section 169 of the Internal Revenue Code; and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities or air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.
(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope of application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with section seven.

(f) Allowance for certain government obligations and obligations secured by residential property. — The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with subsections (b), (c), (d) and (e) of this section shall be further adjusted by multiplying such taxable income after such adjustment by said subsections by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or
entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;

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

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

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

§11-24-13. Returns; time for filing.

(a) On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article.

(b) Special rule for tax exempt corporations with unrelated business taxable income. — Notwithstanding the provisions of subsection (a) of this section, when an income tax return is required from a corporation generally exempt from tax under subsection (a), section five of this article, which has unrelated business taxable income, the annual return shall be filed on or before the fifteenth day of the fifth month following the close of the taxable year.

(c) The tax commissioner may combine into one form the annual return due under this article and the annual return due under article twenty-three of this chapter. When a combined business franchise tax and corporation net income tax annual return is filed by a
taxpayer, the amount of tax remitted shall be applied first against any business franchise tax that may be due for the taxable year under said article and then against any corporation net income tax that may be due for the taxable year. The tax commissioner may also combine the forms for filing declarations of estimated tax and the forms for making installment payments of estimated tax.

(d) Effective date. — The amendments to this section made in the year one thousand nine hundred ninety-three shall apply to tax returns that become due after the first day of that year.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.


Except as otherwise provided in this article, no state agency, county, municipality or political subdivision or agency of this state may impose any law, regulation, rule or requirement of any sort relating to the use, sale or distribution of tobacco products which is more restrictive than the provisions of this article: Provided, That any law, regulation, rule or requirement duly enacted and in effect on the first day of January, one thousand nine hundred ninety-three, shall remain in effect and enforceable, but may not be amended to make it more restrictive than it was on the first day of January, one thousand nine hundred ninety-three.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 20. CHARITABLE BINGO.

§47-20-4. Annual license; conditions on holding of games.

A charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: Provided, That for purposes of this section the various branches, chapters or
lodges of any national association or organization or
local churches of a nationally organized church are not
considered affiliates or auxiliaries of each other. The
commissioner shall by regulation provide for the
manner for determining to which organization, wheth-

er the parent organization, an affiliate or an auxiliary,
the one license allowed under this section is granted.
An annual license is valid for one year from the date
of issuance and entitles only the licensee to hold no
more than two bingo occasions per week. No two or
more organizations may hold a joint bingo occasion
under any annual licenses. No bingo occasion held
pursuant to an annual license may exceed six hours
duration.
A licensee shall display its annual bingo license
conspicuously at the location where the bingo occasion
is held.
All bingo occasions shall be open to the general
public: Provided, That no licensee shall permit or
allow any individual under the age of eighteen to
participate in the playing of any bingo game with
knowledge or reason to believe that the individual is
under the age of eighteen: Provided, however, That an
individual under the age of eighteen may attend the
playing of a bingo game when accompanied by and
under the supervision of an adult relative or a legal
guardian of said individual.
§47-20-5. Limited occasion license; conditions on holding of
games.
A limited occasion license is valid only for the time
period specified in the application and entitles only the
licensee to hold a bingo occasion once every twenty-
four hours for a time period not to exceed two weeks.
Two or more organizations may hold a joint bingo
occasion provided each participating organization has
been granted a limited occasion bingo license for such
jointly held occasion. No bingo occasion held pursuant
to a limited occasion license may exceed twelve hours
in duration. Each charitable or public service organi-

zation which desires to hold bingo occasions pursuant
to this section, or any of its auxiliaries or other
organizations otherwise affiliated with it shall obtain a
limited occasion license notwithstanding the fact that
it holds a valid annual license: Provided, That no
licensee which holds an annual license may obtain
more than one limited occasion license.

Only three limited occasion licenses per year in the
aggregate may be granted to a charitable or public
service organization and all of its auxiliaries or other
associations or organizations otherwise affiliated with
it, none of which hold an annual license. For purposes
of this section the various branches, chapters or lodges
of any national association or organization or local
churches of a nationally organized church are not
considered affiliates or auxiliaries of each other. The
commissioner shall by regulation provide the manner
for determining to which organization, whether the
parent organization, an affiliate or an auxiliary, the
three licenses allowed under this section are granted.

A licensee shall display its limited occasion license
conspicuously at the location where the bingo occasion
is held.

All bingo occasions shall be open to the general
public: Provided, That no licensee shall permit or
allow any individual under the age of eighteen to
participate in the playing of any bingo game with
knowledge or reason to believe that the individual is
under the age of eighteen: Provided, however, That an
individual under the age of eighteen may attend the
playing of a bingo game when accompanied by and
under the supervision of an adult relative or a legal
guardian of said individual.

§47-20-6. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commissi-
er for annual licenses in the amount of five hundred
dollars, except that for volunteer or nonprofit groups
who gross less than twenty thousand dollars the fee
shall be two hundred dollars and for bona fide senior
citizen organizations the fee is fifty dollars. A license
fee shall be paid to the tax commissioner for a limited
occasion license in the amount of one hundred dollars. A license fee of five hundred dollars shall be paid to the tax commissioner for a state fair license as provided in section twenty-two of this article. All revenue from said license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in said section. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state and no county or municipality or other political subdivision of this state is empowered to impose a license or franchise tax or fee.

(b) The gross proceeds derived from the conduct of a bingo occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. The licensee is exempt from payment of consumers sales and service taxes and use taxes on all purchases for use or consumption in the conduct of a bingo occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of bingo cards: Provided, That the exemption provided in this subsection does not apply to state fair bingo proceeds.

§47-20-6a. Super bingo license.

Any charitable or public service organization may, upon payment of a five thousand dollar license fee, apply to the tax commissioner for issuance of an annual super bingo license. All revenue from said license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in said section. The tax commissioner shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code specifying those organizations which qualify as charitable or public service organizations.

A holder of a super bingo license may conduct one super bingo occasion each month during the period of
the license at which up to thirty thousand dollars in
prizes may be awarded, notwithstanding the seven
thousand five hundred dollar limitation on prizes
specified in section ten of this article.

A charitable or public service organization that has
a regular or limited occasion bingo license may apply
for a super bingo license.


Except as provided otherwise in sections twelve-a,
thirteen and twenty-two of this article, no individual
who participates in any manner in the conduct of a
bingo occasion or the operation of a concession in
conjunction with a bingo occasion may receive or
accept any commission, wage, salary, reward, tip,
donation, gratuity or other form of compensation or
remuneration whether directly or indirectly, regard-
less of the source, for his work, labor or services.

§47-20-12a. Compensation of bingo operator.

(a) Within the guidelines set forth in subsections (b),
(c) and (d) of this section, a licensee may pay a salary,
not to exceed the federal minimum wage, to operators
of bingo games who are active members of the licen-
see organization.

(b) If the licensee’s gross receipts from bingo occa-
sions equal or exceed one hundred thousand dollars
for the licensee’s most recently filed annual financial
report, a salary may be paid to not more than three
operators.

(c) If the licensee’s gross receipts from bingo occa-
sions are less than one hundred thousand dollars, but
equal or exceed fifty thousand dollars for the licen-
see’s most recently filed annual financial report, a
salary may be paid to not more than two operators.

(d) If the licensee’s gross receipts from bingo occa-
sions are less than fifty thousand dollars for the
licensee’s most recently filed annual financial report,
a salary may be paid to no more than one operator.
§47-20-15. **Payment of reasonable expenses from proceeds; net proceeds disbursement.**

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed fifteen percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to:

1. Rent paid for the use of the premises: Provided, that a copy of the rental agreement was filed with the bingo license application and any changes thereto were filed within ten days of being made;
2. The cost of custodial services;
3. The cost to the licensee organization for equipment and supplies used to conduct the bingo occasion;
4. The cost to the licensee organization for advertising the bingo occasion;
5. The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and
6. The cost of providing child care services to the bingo patrons: Provided, that any proceeds received from the provision of child care services shall be handled the same as bingo proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section ten of this article, may be paid out of the gross proceeds of the conduct of bingo.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the bingo occasion. The licensee shall expend all net bingo proceeds and any interest earned thereon for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the bingo occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies
for a bingo license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, improvement, maintenance or repair of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) Any licensee which, in good faith, finds itself unable to comply with the requirements of this provision shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than sixty days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are so expended.

§47-20-16. Records; commissioner audit.

Any licensee which holds a bingo occasion as provided by this article shall maintain a separate checking account and separate bookkeeping procedure for its bingo operations. Money for expenses shall be withdrawn only by checks having preprinted consecutive numbers and made payable to a specific person, firm or corporation and at no time shall a check be made payable to cash. A licensee shall maintain all records required by this article for at least three years and the
10 records shall be open to the commissioner for reasonable inspection. Whenever the tax commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee's books and records: Provided, That the tax commissioner shall perform or cause to be performed an audit of the books and records of any licensee that has awarded total prizes in excess of one hundred seventy-five thousand dollars. The tax commissioner shall file a copy of the completed audit with the county commission of the county wherein the licensee holds bingo occasions.

§47-20-24. Filing of reports.

1 Each licensee holding an annual license shall file with the tax commissioner quarterly and an annual financial report summarizing its bingo operations for the time period covered by the report. Each quarterly report shall be filed within twenty days after the end of the quarter which it covers. The annual report shall be filed within thirty days after the expiration of the license under which the operations covered by the report were held.

10 Each licensee holding a limited occasion license or state fair license shall file with the tax commissioner a financial report summarizing its bingo operations for the license period within thirty days after the expiration of the license under which the operations covered by the report are held. The report shall contain the name, address and social security number of any individual who receives during the course of a bingo occasion prizes the aggregate value of which exceeds one hundred dollars, and other information required by the commissioner: Provided, That any licensee failing to file such report when due shall be liable for a penalty of twenty-five dollars for each month or fraction thereof during which the failure continues, such penalty not to exceed one hundred dollars: Provided, however, That annual financial reports for license years ending after the first day of July, one thousand nine hundred ninety-three, must be audited
financial reports as defined by the American institute
of certified public accountants if a licensee's gross
receipts exceed one hundred thousand dollars: Provided
further, That annual financial reports for license
years ending after the first day of July, one thousand
nine hundred ninety-three, must contain a compila-
tion and review of such financial report, as defined by
the American institute of certified public accountants,
if a licensee's gross receipts exceed fifty thousand
dollars but are less than one hundred thousand dollars.

§47-20-28a. Certain operators of bingo games to provide for
smoking and nonsmoking sections.

Any bingo operator who distributes more than one
hundred bingo cards or bingo sheets at any bingo
occasion shall provide a smoking and nonsmoking
section, if smoking is permitted.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-7. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commis-
er for annual licenses in the amount of five hundred
dollars. A license fee shall be paid to the tax commis-
sioner for a limited occasion license in the amount of
fifty dollars. All revenue from said license fee shall be
deposited in the special revenue account established
under the authority of section two-a, article nine,
chapter eleven of this code and used to support the
investigatory activities provided for in said section.
The license fee imposed by this section is in lieu of all
other license or franchise taxes or fees of this state and
no county or municipality or other political subdivi-
sion of this state is empowered to impose a license or
franchise tax or fee on any raffle or raffle occasion.

(b) The gross proceeds derived from the conduct of
a raffle occasion are exempt from state and local
business and occupation taxes, income taxes, excise
taxes and all special taxes. Any charitable or public
service organization conducting a raffle occasion
pursuant to the provisions of this article is exempt
from payment of consumers sales and service taxes,
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22 use taxes and all other taxes on all purchases for use
23 or consumption in the conduct of a raffle occasion and
24 is exempt from collecting consumers sales taxes on
25 any admission fees and sales of raffle tickets.

§47-21-15. Payment of reasonable expenses from proceeds;
net proceeds disbursement.

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of raffle
3 occasions, not to exceed fifteen percent of the gross
4 proceeds collected during a license period, may be paid
5 out of the gross proceeds of the conduct of raffle,
6 including, but not limited to:

7 (1) Rent paid for the use of the premises: Provided,
8 That a copy of the rental agreement was filed with the
9 raffle license application with any modifications
10 thereto to be filed within ten days of being made;

11 (2) The cost of custodial services;

12 (3) The cost to the licensee organization for equip-
13 ment and supplies used to conduct the raffle occasion;

14 (4) The cost to the licensee organization for advertis-
15 ing the raffle occasion;

16 (5) The cost of hiring security personnel, licensed
17 pursuant to the provisions of article eighteen, chapter
18 thirty of this code; and

19 (6) The cost of providing child care services to the
20 bingo patrons: Provided, That any proceeds received
21 from the provision of child care services shall be
22 handled the same as bingo proceeds.

23 (b) The actual cost to the licensee for prizes, not to
24 exceed the amounts as specified in section eleven of
25 this article, may be paid out of the gross proceeds of
26 the conduct of raffle.

27 (c) The cost of any refreshments, souvenirs or any
28 other item sold or otherwise provided through any
29 concession to the patrons may not be paid for out of
30 the gross proceeds from the raffle occasion. The
31 licensee shall expend all net raffle proceeds and any
32 interest earned thereon for the charitable or public
33 service purposes stated in the application within one
34 year after the expiration of the license under which
35 the raffle occasions were conducted. A licensee which
36 does not qualify as a qualified recipient organization
37 may apply to the commissioner at the time it applies
38 for a raffle license or as provided in subsection (e) of
39 this section for permission to apply any or all of its net
40 proceeds to directly support a charitable or public
41 service activity or endeavor which it sponsors.
42 (d) No gross proceeds from any raffle operation may
43 be devoted or in any manner used by any licensee or
44 qualified recipient organization for the construction,
45 acquisition, improvement, maintenance or repair of
46 real or personal property except that which is used
47 exclusively for one or more charitable or public
48 service purposes or as provided in subdivision (3),
49 subsection (a) of this section.
50 (e) Any licensee which, in good faith, finds itself
51 unable to comply with the requirements of the forego-
52 ing provisions of this section shall apply to the com-
53 missioner for permission to expend its net proceeds for
54 one or more charitable or public service purposes
55 other than that stated in its license application or for
56 permission to expend its net proceeds later than the
57 one-year time period specified in this section. The
58 application shall be on a form furnished by the
59 commissioner and shall include the particulars of the
60 requested changes and the reasons for the changes.
61 The application shall be filed no later than sixty days
62 before the end of the one-year period specified in this
63 section. In the case of an application to extend the
64 time in which the net proceeds are to be expended for
65 a charitable or public service purpose, the licensee
66 shall file such periodic reports with the commissioner
67 as the commissioner directs until the proceeds are so
68 expended.

§47-21-22. Filing of reports.
1 Each licensee holding an annual, limited or state fair
2 license shall file with the commissioner a financial
report summarizing its raffle operations within thirty
days after the expiration date of such license.

The reports required by this section shall contain
the name, address and social security number of any
individual who received during the course of a raffle
occasion prizes the aggregate value of which exceeded
one hundred dollars, and other information required
by the commissioner: Provided, That any licensee
failing to file such report when due shall be liable for
a penalty of twenty-five dollars for each month or
fraction thereof during which the failure continues,
such penalty not to exceed one hundred dollars:
Provided, however, That annual financial reports for
license years ending after the first day of July, one
thousand nine hundred ninety-three, must be audited
financial reports as defined by the American institute
of certified public accountants if a licensee's gross
receipts exceed one hundred thousand dollars: Provided
further, That annual financial reports for license
years ending after the first day of July, one thousand
nine hundred ninety-three, must contain a compila-
tion and review of such financial report, as defined by
the American institute of certified public accountants,
if a licensee's gross receipts exceed fifty thousand
dollars but are less than one hundred thousand dollars.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

§47-23-1. Short title.

This article shall be known as and may be cited as
the "Charitable Raffle Boards and Games Act".


For purposes of this article, unless specified
otherwise:

(a) "Commissioner" means tax commissioner of the
state of West Virginia, or his delegate.

(b) "Retail face value" means the projected gross
income to be received by the retailer from the sale of
all raffle chances on or in the charitable raffle boards
or games.
(c) "Indicia" means the impression authorized by the commissioner to serve as such indicia, and shall be of the design and color prescribed by the commissioner.

(d) "Person" means any individual, association, society, incorporated or unincorporated organization, firm partnership or other nongovernmental entity or institution.

(e) "Retailer" means every person engaged in the business of making retail sales of raffle chances.

(f) "Charitable raffle board" or "charitable raffle game" means a board or other device that has many folded printed slips to be pulled from the board or otherwise distributed without a board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player to a designated prize: Provided, That a "charitable raffle board" or "charitable raffle game" shall not include the sale, by an elementary or secondary school, parent-teacher organization of any such as the girl scouts of America or the boy scouts of America, or any political party executive committee, of chances in an effort, by the person purchasing the chance, to obtain a designated prize: Provided, however, That the aggregate value of all such prizes in any given calendar year shall not exceed three thousand five hundred dollars.

(g) "Sale" means the transfer of the ownership of tangible personal property for a consideration.

(h) "Wholesaler" or "distributor" means any person or entity engaged in the wholesale distribution of charitable raffle boards or games or similar boards or devices, as defined by the commissioner, and licensed under the provisions of this article, to distribute said devices to charitable raffle boards or games retailers as defined in this article. It also includes anyone who is engaged in the manufacturing, packaging, preparing or repackaging of charitable raffle boards or games for distribution in this state.

§47-23-3. License fee.
Wholesalers or distributors of charitable raffle boards and games to retailers shall be licensed and a license fee in the amount of five hundred dollars shall be paid to the commissioner by each wholesaler or distributor for an annual license. Wholesalers shall also pay a fee of six cents on each dollar of retail value of each charitable raffle board or game sold to a retailer. There is hereby imposed an excise tax of six percent of the winnings on any charitable raffle boards and games. The tax shall be collected and remitted to the tax commissioner on a monthly basis by the holder of the raffle game. All revenue from said fee shall be placed in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code.

§47-23-4. No fee on charitable raffle boards and games by municipalities or other governmental subdivisions.

No municipality or governmental subdivision shall levy any excise or other tax or fee requiring charitable raffle boards or games to be stamped, or requiring licenses for sale thereof, other than licenses which may be imposed as a result of licenses provided for in article twelve, chapter eleven of this code.

§47-23-5. Indicia; how affixed; violations.

The indicia required by this article, as described in the charitable raffle boards and games fee rules and regulations, shall be impressed upon each charitable raffle board or game, of an aggregate value of not less than the amount of the fee imposed. The indicia so impressed shall be prima facie evidence of payment of the annual license fee imposed by this article. Indicia printing approval shall be received from only the commissioner by wholesalers and distributors who have paid the annual license fee provided in section three of this article.

Except as may be otherwise provided in the rules and regulations prescribed by the commissioner under authority of this article, such indicia shall be impressed by each wholesaler or distributor prior to
the sale of such boards or games to a retailer. Each wholesaler or distributor making such sales must be authorized to do business in this state prior to the sale or delivery of any charitable raffle boards or games to any retailer in this state.

Whenever any charitable raffle boards or games are found in the place of business of any retailer without the indicia so impressed, the prima facie presumption shall arise that such charitable raffle boards or games are kept therein in violation of the provisions of this article.

§43-23-6. Form of indicia; custody; security for payments.

1 The commissioner shall design the indicia to be used as herein provided for impression on charitable raffle boards or games. The charitable raffle boards or games shall have the purchase price clearly imprinted thereon and shall have printed or impressed thereon the words “State of West Virginia — Raffle Board Stamp” or such other words and figures as the commissioner may deem proper.

§47-23-7. Surety bonds required; release of surety; new bond.

1 The commissioner may require wholesalers and distributors to file continuous surety bond in an amount to be fixed by the commissioner except that the amount shall not be less than one thousand dollars. Upon completion of the filing of a surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. The bond shall be conditioned upon faithfully complying with the provisions of this article including the filing of the returns and payment of all fees prescribed by this article.

Any surety on a bond furnished hereunder shall be released and discharged from all liability accruing on such bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the tax commissioner a written request to be discharged. This shall not relieve, release or discharge
the surety from liability already accrued or which
shall accrue before the expiration of the sixty-day
period. Whenever any surety shall seek release as
herein provided, it shall be the duty of the wholesaler
or distributor to supply the commissioner with anoth-
er bond.

§47-23-8. How fee paid; reports required; due date; records
to be kept; inspection of records and stocks;
examination of witnesses, summons, etc.

1 The fee hereby imposed shall be paid by each
2 licensed wholesaler or distributor to the commissioner
3 on or before the fifteenth day of April, July, October
4 and January for the preceding three calendar months.
5 The measure of the fee shall be determined by
6 multiplying the total amount of the retail face value of
7 all charitable raffle boards and games sold by wholes-
8 alers or distributors to retailers during the said three-
9 month period by six percent. All fees due and owing
10 to the commissioner by reason of this article, if paid
11 after the due dates required by this section, shall be
12 subject to the provisions of article ten, chapter eleven
13 of this code. Each wholesaler or distributor shall
14 provide with each quarterly payment of fees a report
15 covering the business transacted in the previous three
16 calendar months and providing such other information
17 as the commissioner may deem necessary for the
18 ascertainment or assessment of the fee imposed by this
19 article. Such report shall be signed under penalty of
20 perjury on such forms as the tax commissioner may
21 prescribe and the wholesaler or distributor shall at the
22 time of filing remit all fees owed or due.

23 The commissioner may authorize any wholesaler or
24 distributor holding the license required by this article
25 to use any metering device approved by the commis-
26 sioner, such devices to be sealed by the commissioner,
27 before being used, which device shall be used only in
28 accordance with the regulations prescribed by the
29 commissioner. A wholesaler or distributor shall pay
30 the fee in advance where a metering device is used, in
31 which event such wholesaler or distributor shall
32 deliver the metering device to the commissioner who
shall seal the meter in accordance with the prepayment so made.

The reports prescribed herein are required, although a fee might not be due or no business transacted for the period covered by the report.

Each person required to file a report under this article shall make and keep such records as shall be prescribed by the commissioner that are necessary to substantiate the returns required by this article, including, but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than three years.

Unless otherwise permitted, in writing, by authority of the commissioner, each delivery ticket or invoice for each purchase or sale of charitable raffle boards or games must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchaser, the point of delivery, the date, quantity and price of the product sold, and the fee must be set out separately, and such other reasonable information as the commissioner may require. These invoicing requirements also apply to cash sales and a person making such sales must maintain such records as may be reasonably necessary to substantiate his return.

In addition to the commissioner’s powers set forth in section five, article ten, chapter eleven of this code, the commissioner shall have authority to inspect or examine the stock of charitable raffle boards and games kept in and upon the premises of any person where charitable raffle boards and games are placed, stored or sold, and he shall have authority to inspect or examine the records, books, papers and any equipment or records of manufacturers, wholesalers and distributors or any other person for the purpose of determining the quantity of charitable raffle boards and games acquired or disbursed to verify the truth and accuracy of any statement or report and to ascertain whether the fee imposed by this article has been properly paid.
In addition to the commissioner's powers set forth in section five, article ten, chapter eleven of this code, and as a further means of obtaining the records, books and papers of a manufacturer, wholesaler, distributor or any other person and ascertaining the amount of fees and reports due under this article, the commissioner shall have the power to examine witnesses under oath; and if the witness shall fail or refuse at the request of the commissioner to grant access to the books, records or papers, the commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue summons to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of fee and reports due, if any.

§47-23-9. Penalty for failure to file return when no fee due; crimes.

(a) Penalty for failure to file required return where no fee due. — In the case of any failure to make or file a return when no fee is due, as required by this article, on the date prescribed therefor, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars for each month of such failure or fraction thereof.

(b) It shall be a misdemeanor, punishable pursuant to the terms of this article, if any person:

(1) Makes any false entry upon an invoice required to be made under the provisions of this article or with intent to evade the fee imposed by this article presents any such false entry for the inspection of the commissioner;

(2) Prevents or hinders the commissioner from making a full inspection of any place where charitable raffle boards or games subject to the fee imposed by
this state are sold or stored or prevents or hinders the
full inspection of invoices, books, records or papers
required to be kept under the provisions of this article;

(3) Sells any charitable raffle boards or games in this
state without there having been first affixed thereto
the indicia required by this article;

(4) Being a retailer in this state, has in his possession
any charitable raffle boards or games not bearing the
indicia herein required to be affixed thereto or,
whoever fails to produce on demand by the commis-
sioner invoices of all charitable raffle boards and
games purchased or received by him within three
years prior to such demand, unless upon satisfactory
proof it is shown that such nonproduction is due to
providential or other causes beyond his control;

(5) Being a retailer in this state, purchases or
acquires charitable raffle boards and games from any
person other than a wholesaler or distributor licensed
under this article; or

(6) Who is not a wholesaler or distributor of chari-
table raffle boards or games, as provided by this
article, shall have in his possession within the state
any charitable raffle boards or games not bearing the
proper indicia of this state, such possession shall be
inferred to be for the purpose of evading the payment
of the fees imposed or due thereon.

(c) Any person convicted of violating the provisions
of subsection (b) of this section, shall be confined in
the county jail for not less than one year or fined not
less than one thousand dollars nor more than ten
thousand dollars, or both fined and imprisoned.

(d) Any person who falsely or fraudulently makes,
forges, alters or counterfeits any indicia prescribed, or
defined, by the provisions of this article, or its related
rules and regulations, or who knowingly and willfully
makes, causes to be made, purchases, receives or has
in his possession, any device for forging or counterfeit-
ing any indicia, or has in his possession, any indicia
not properly issued by the commissioner or tampers
with or alters any stamping device authorized by the
commissioner, or uses more than once any indicia
provided for and required by this article for the
purpose of evading the fee hereby imposed, shall be
guilty of a felony, and, upon conviction thereof, shall
be sentenced to pay a fine of not less than five
thousand dollars nor more than ten thousand dollars
or imprisoned in the penitentiary for a term of not less
than one year nor more than five years, or both fined
and imprisoned.

(e) Whenever the commissioner, or any of his
depuities or employees authorized by him, or any
peace officer of this state shall discover any charitable
raffle boards or games subject to the fee as provided
by this article and upon which the fee has not been
paid as herein required, such charitable raffle boards
and games shall thereupon be deemed to be contra-
band, and the commissioner, or such deputy or
employee or any peace officer of this state, is hereby
authorized and empowered forthwith to seize and take
possession of such charitable raffle boards or games,
without a warrant, and such charitable raffle boards
and games shall be forfeited to the state, and the
commissioner shall retain the forfeited charitable
raffle boards and games until they are no longer
needed as evidence in any prosecution of the person
from whom the raffle boards and games were seized.

The commissioner may within a reasonable time
thereafter destroy such charitable raffle boards and
games or may affix the indicia required by this article
upon each charitable raffle boards or games and sell
said charitable raffle boards or games at public auction
to the highest bidder: Provided, That such seizure and
destruction or public auction shall not be deemed to
relieve any person from fine or imprisonment as
provided herein for violation of any provisions of this
article. Such destruction may be made in any county
the commissioner deems most convenient and eco-
nomical. All revenue from said license fee shall be
deposited in the special revenue account established
under the authority of section two-a, article nine,
chapter eleven of this code and used to support the
investigatory activities provided for in said section.

(e) Magistrates shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

§47-23-10. Transportation of unstamped charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.

Every person who shall knowingly transport charitable raffle boards or games not bearing indicia as required by section six of this article upon the public highways, waterways, airways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such charitable raffle boards or games which shall show the true name and the complete and exact address of the manufacturer, the true name and complete and exact address of the wholesaler or distributor who is the purchaser, the quantity and description of the charitable raffle boards and games transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state fee, or the tax, if any, of the state or foreign country at the point of ultimate destination: Provided, That any common carrier which has issued a bill of lading for a shipment of charitable raffle boards and games and is without notice to itself or to any of its agents or employees that said charitable raffle boards or games have no proper indicia affixed thereto as required by section six of this article shall be deemed to have complied with this article and the vehicle or vessel in which said charitable raffle boards or games are being transported shall not be subject to confiscation hereunder. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the charitable raffle boards or games so transported, the vehicle or vessel in which the charitable raffle boards or games are being transported and any paraphernalia or devices used in connection with such, are declared to be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the
Any person who transports charitable raffle boards or games in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

Charitable raffle boards and games seized under this section shall be forthwith destroyed in the manner provided hereinafter in this section and such destruction shall not relieve the owner of the destroyed charitable raffle boards and games of any action by the commissioner for violations of this or any other sections of this article.

The commissioner shall immediately, after any seizure made pursuant to this section, institute a proceeding for the confiscation thereof in the circuit court of the county in which the seizure is made. The court may proceed in a summary manner and may direct confiscation by the commissioner: Provided, that any person claiming to be the holder of a security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard, and in the event it appears to the court that the property was unlawfully used by a person other than such claimant, and if the said claimant acquired his security interest in good faith and without knowledge that the vehicle or vessel, was going to be so used, the court shall waive forfeiture in favor of such claimant and order the vehicle or vessel returned to such claimant.

§47-23-11. Administration; rules.

(a) The commissioner shall promulgate rules to administer the provisions of this article in accordance with the provisions of chapter twenty-nine-a of this code. Additionally, the commissioner shall promulgate a rule which sets forth a means of verifying on the face of every charitable raffle boards or games that the charitable raffle boards or games is distributed by a
(b) The commissioner shall deny an application for a license if he finds that the issuance thereof would be in violation of the provisions of this article.

(c) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article or administrative rule if the commissioner finds that said failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to said licensee.

(d) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a charitable raffle boards or games wholesaler's or distributor's license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.


If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the applicability of such provision to other persons or circumstances shall not be affected thereby.


Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code shall apply to the fees imposed by this article with like effect as if said act were applicable only to the fees imposed by this article and were set forth in extenso in this article.
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 ninety days 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 5th day of __________, 1993.

Governor