WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 129

(By Senator Craigo, et al)

PASSED February 22, 1996
In Effect from Passage
ENROLLED

Senate Bill No. 129

(BY SENATORS CRAIGO, PLYMALE AND OLIVERIO)

[Passed February 22, 1996; in effect from passage.]

AN ACT to amend and reenact sections five-a, nine and twenty-seven, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-a; to amend and reenact sections seven-b, thirteen-a and twenty-four, article twenty-four of said chapter; and to further amend said article by adding thereto a new section, designated section thirty-eight, all relating generally to how financial organizations and other corporations determine tax liability, file returns and pay business franchise and corporation net income taxes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That sections five-a, nine and twenty-seven, article twenty-
three, chapter eleven of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, be amended and
reenacted; that said article be further amended by adding
thereto a new section, designated section nine-a; that sections
seven-b, thirteen-a and twenty-four, article twenty-four of
said chapter be amended and reenacted; and that said article
be further amended by adding thereto a new section, desig-
nated section thirty-eight, all to read as follows:

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-5a. Special apportionment rules — Financial organi-
zations.

1 (a) General. — The Legislature hereby finds that the
general formula set forth in section five of this article for
apportioning the tax base of corporations and partner-
ships taxable in this state as well as in another state is
inappropriate for use by financial organizations due to
the particular characteristics of those organizations and
the manner in which their business is conducted.
Accordingly, the general formula set forth in section five
of this article may not be used to apportion the tax base
of such financial organizations which shall use only the
apportionment formula and methods set forth in this
section.

13 (b) West Virginia financial organizations taxable in
another state. — A financial organization that has its
commercial domicile in this state and which is taxable in
another state may not apportion its tax base as provided
in section five of this article, but shall allocate all of its
tax base to West Virginia without apportionment:
Provided, That such financial organization shall be
allowed as a credit against its tax liability under this
article the credit described in section twenty-seven of
this article.

23 (c) Out-of-state financial organizations with business
activities in this state. — A financial organization that
does not have its commercial domicile in this state and
which regularly engages in business in this state shall
apportion its tax base to this state by multiplying it by
the special gross receipts factor calculated as provided
in subsection (f) of this section. The product of this
multiplication is the portion of its tax base that is
attributable to business activity in this state.

(d) Engaging in business — nexus presumptions and
exclusions. — A financial organization that has its
commercial domicile in another state is presumed to be
regularly engaging in business in this state if during any
year it obtains or solicits business with twenty or more
persons within this state, or if the sum of the value of its
gross receipts attributable to sources in this state equals
or exceeds one hundred thousand dollars. However,
gross receipts from the following types of property (as
well as those contacts with this state reasonably and
exclusively required to evaluate and complete the
acquisition or disposition of the property, the servicing
of the property or the income from it, the collection of
income from the property, or the acquisition or liquida-
tion of collateral relating to the property) shall not be a
factor in determining whether the owner is engaging in
business in this state:

(1) An interest in a real estate mortgage investment
conduit, a real estate investment trust or a regulated
investment company;

(2) An interest in a loan backed security representing
ownership or participation in a pool of promissory notes
or certificates of interest that provide for payments in
relation to payments or reasonable projections of pay-
ments on the notes or certificates;

(3) An interest in a loan or other asset from which the
interest is attributed to a consumer loan, a commercial
loan or a secured commercial loan, and in which the
payment obligations were solicited and entered into by
a person that is independent, and not acting on behalf, of
the owner;

(4) An interest in the right to service or collect income
from a loan or other asset from which interest on the
loan is attributed as a loan described in the previous
paragraph, and in which the payment obligations were
solicited and entered into by a person that is independ-
ent, and not acting on behalf, of the owner; and
(5) Any amounts held in an escrow or trust account
with respect to property described above.

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

(1) “Commercial domicile”. See section three of this
article.

(2) “Deposit” means: (A) The unpaid balance of money
or its equivalent received or held by a financial organi-
zation in the usual course of business and for which it
has given or it is obligated to give credit, either condi-
tionally or unconditionally, to a commercial checking,
savings, time or thrift account whether or not advance
notice is required to withdraw the credit funds, or which
is evidenced by a certificate of deposit, thrift certificate,
investment certificate or certificate of indebtedness, or
other similar name, or a check or draft drawn against a
deposit account and certified by the financial organiza-
tion, or a letter of credit or a traveler’s check on which
the financial organization is primarily liable: Provided,
That without limiting the generality of the term “money
or its equivalent”, any such account or instrument must
be regarded as evidencing the receipt of the equivalent
of money when credited or issued in exchange for checks
or drafts or for a promissory note upon which the person
obtaining any such credit or instrument is primarily or
secondarily liable or for a charge against a deposit
account or in settlement of checks, drafts or other
instruments forwarded to such bank for collection;

(B) Trust funds received or held by such financial
organization, whether held in the trust department or
held or deposited in any other department of such
financial organization;

(C) Money received or held by a financial organization
or the credit given for money or its equivalent received
or held by a financial organization in the usual course of
business for a special or specific purpose, regardless of
the legal relationship thereby established, including,
without being limited to, escrow funds, funds held as
security for an obligation due the financial organization
or other (including funds held as dealers' reserves) or for
securities loaned by the financial organization, funds
deposited by a debtor to meet maturing obligations,
funds deposited as advance payment on subscriptions to
United States government securities, funds held for
distribution or purchase of securities, funds held to meet
its acceptances or letters of credit and withheld taxes:
Provided, That there shall not be included funds which
are received by the financial organization for immediate
application to the reduction of an indebtedness to the
receiving financial organization, or under condition that
the receipt thereof immediately reduces or extinguishes
such an indebtedness;

(D) Outstanding drafts (including advice or authoriza-
tion to charge a financial organization's balance in
another such organization), cashier's checks, money
orders or other officer's checks issued in the usual course
of business for any purpose, but not including those
issued in payment for services, dividends or purchases or
other costs or expenses of the financial organization
itself; and

(E) Money or its equivalent held as a credit balance by
a financial organization on behalf of its customer if such
entity is engaged in soliciting and holding such balances
in the regular course of its business.

(3) "Financial organization” means a financial organi-
zation as defined in subdivision (13), subsection (b),
section three of this article, as well as a partnership
which derives more than fifty percent of its gross busi-
ness income from one or more of the activities enumer-
ated in subparagraphs (1) through (6), paragraph (C) of
said subdivision.
(4) "Sales" means: For purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (f) of this section, regardless of their source.

(f) Special gross receipts factor. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six, article twenty-four of this chapter.

(1) Numerator. — The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under section five of this article, the following:

(A) Gross receipts from the lease or rental of real or tangible personal property (whether as the economic equivalent of an extension of credit or otherwise) if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if such security property is located in the state. In the event that such security property is also located in one or more other states, such receipts shall be presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be promulgated by the tax commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this state;

(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible
property that are made to residents of this state, whether
at a place of business, by traveling loan officer, by mail,
by telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commer-
cial loans and installment obligations which are unse-
cured or are secured by intangible property if and to the
extent that the borrower or debtor is a resident of or is
domiciled in this state: Provided, That such receipts are
presumed to be from sources in this state and such
presumption may be overcome by reference to factors
described in rules to be promulgated by the tax commis-
sioner, including the factor that the proceeds of any such
loans were applied and used by the borrower entirely
outside of this state;

(E) Interest income and other receipts from a financial
organization's syndication and participation in loans,
under the rules set forth in (A) through (D), above;

(F) Interest income and other receipts, including
service charges, from financial institution credit card
and travel and entertainment credit card receivables and
credit card holders' fees if the borrower or debtor is a
resident of this state or if the billings for any such
receipts are regularly sent to an address in this state;

(G) Merchant discount income derived from financial
institution credit card holder transactions with a mer-
chant located in this state. In the case of merchants
located within and without this state, only receipts from
merchant discounts attributable to sales made from
locations within this state shall be attributed to this
state. It shall be presumed, subject to rebuttal, that the
location of a merchant is the address shown on the
invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are
attributed to this state if:

(i) The service receipts are loan-related fees, including
loan servicing fees, and the borrower resides in this
state, except that, at the taxpayer's election, receipts
from loan-related fees which are either: (I) "Pooled" or
aggregated for collective financial accounting treatment;
or (II) manually written as nonrecurring extraordinary
charges to be processed directly to the general ledger
may either be attributed to a state based upon the
borrowers' residences or upon the ratio that total inter-
est sourced to that state bears to total interest from all
sources;

(ii) The service receipts are deposit-related fees and the
depositor resides in this state, except that, at the tax-
payer's election, receipts from deposit-related fees which
are either: (I) "Pooled" or aggregated for collective
financial accounting treatment; or (II) manually written
as nonrecurring extraordinary charges to be processed
directly to the general ledger may either be attributed to
a state based upon the depositors' residences or upon the
ratio that total deposits sourced to that state bears to
total deposits from all sources;

(iii) The service receipt is a brokerage fee and the
account holder is a resident of this state;

(iv) The service receipts are fees related to estate or
trust services and the state's decedent was a resident of
this state immediately before death, or the grantor who
either funded or established the trust is a resident of this
state; or

(v) The service receipt is associated with the perfor-
mance of any other service not identified above and the
service is performed for an individual resident of, or for
a corporation or other business domiciled in, this state
and the economic benefit of such service is received in
this state;

(I) Gross receipts from the issuance of travelers' checks
and money orders if such checks and money orders are
purchased in this state; and

(J) All other receipts not attributed by this rule to a
state in which the taxpayer is taxable shall be attributed
pursuant to the laws of the state of the taxpayer's
commercial domicile.

(2) Denominator. — The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(g) Effective date. — The provisions of this section enacted in chapter one hundred sixty-seven, acts of the Legislature, one thousand nine hundred ninety-one, shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one. The amendments to this section, enacted in the year one thousand nine hundred ninety-six, shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five.


1 (a) In general. — Every person subject to the tax imposed by this article shall make and file an annual return for its 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 corporation 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) of this section, 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) Effective date. — The amendments to this section, made in the year one thousand nine hundred ninety-six, shall apply to tax returns that become due for taxable years beginning on or after the first day of that year.


(a) Privilege to file consolidated return. — An affiliated group of corporations (as defined for purposes of filing a consolidated federal income tax return) shall, subject to the provisions of this section and in accordance with any regulations prescribed by the tax commissioner, have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of filing separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group are included in such return and consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. When a corporation is a member of an affiliated group for a fractional part of the year, the consolidated return shall include the tax base of such corporation for that part of the year during which it is a member of the affiliated group.

(b) Election binding. — If an affiliated group of corporations elects to file a consolidated return under this article, such election once made shall not be revoked for any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

(c) Consolidated return — financial organizations. — An affiliated group that includes one or more financial organizations may elect under this section to file a consolidated return when that affiliated group complies with all of the following rules:

(1) The affiliated group of which the financial organi-
(2) All members of the affiliated group included in the federal consolidated return must consent to being included in the consolidated return filed under this article. The filing of a consolidated return under this article is conclusive proof of such consent;

(3) The taxable capital of the affiliated group shall be the sum of:

(A) The pro forma West Virginia taxable capital of all financial organizations having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(B) The pro forma West Virginia taxable capital of all financial organizations not having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(C) The pro forma West Virginia taxable capital of all other members included in the federal consolidated income tax return, as shown on a combined pro forma West Virginia return prepared for all such nonfinancial organization members, except that the capital, apportionments factors and other items considered when determining tax liability shall not be included in the pro forma return prepared under this paragraph for a member that is totally exempt from tax under section seven of this article, or for a member that is subject to a different special industry apportionment rule provided for in this article. When a different special industry apportionment rule applies, the taxable capital of a member(s) subject to that special industry apportionment rule shall be determined on a separate pro forma West Virginia return for the member(s) subject to that special industry rule and the taxable capital so deter-
mined shall be included in the consolidated return;
(4) The West Virginia consolidated return is prepared in accordance with regulations of the tax commissioner promulgated as provided in article three, chapter twenty-nine-a of this code; and
(5) The filing of a consolidated return does not distort the taxable capital of the affiliated group. In any proceeding, the burden of proof that the taxpayer's method of filing does not distort taxable capital under this article shall be upon the taxpayer.

(d) Combined return. — A combined return may be filed under this article by a unitary group, including a unitary group that includes one or more financial organizations, only pursuant to the prior written approval of the tax commissioner. A request for permission to file a combined return must be filed on or before the statutory due date of the return, determined without inclusion of any extension of time to file the return. Permission to file a combined return may be granted by the tax commissioner only when taxpayer submits evidence that conclusively establishes that failure to allow the filing of a combined return will result in an unconstitutional distortion of the measure of tax under this article. When permission to file a combined return is granted, combined filing will be allowed for the year(s) stated in the tax commissioner's letter. The combined return must be filed in accordance with regulations of the tax commissioner promulgated in accordance with article three, chapter twenty-nine-a of this code.

(e) Method of filing under this article deemed controlling for purposes of other business taxes articles. — The taxpayer shall file on the same basis under article twenty-four of this chapter as such taxpayer files under this article for the taxable year.

(f) Regulations. — The tax commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of
corporations filing a consolidated return, or of any
unitary group of corporations filing a combined return,
and of each corporation in an affiliated or unitary group,
both during and after the period of affiliation, may be
returned, determined, computed, assessed, collected and
adjusted, in such manner as the tax commissioner deems
necessary to clearly reflect tax liability under this article
and the factors necessary for the determination of such
liability, and in order to prevent avoidance of such tax
liability.

(g) Computation and payment of tax. — In any case in
which a consolidated or combined return is filed, or
required to be filed, the tax due under this article from
the affiliated or unitary group shall be determined,
computed, assessed, collected and adjusted in acord-
dance with regulations prescribed by the tax commis-
sioner, in effect on the last day prescribed by section
nine of this article for the filing of such return, and such
affiliated or unitary group, as the case may be, shall be
treated as the taxpayer. However, when any member of
an affiliated or unitary group that files a consolidated or
combined return under this article is allowed to claim
credit against its tax liability under this article for
payment of any other tax, the amount of credit allowed
may not exceed that member’s proportionate share of the
affiliated or unitary group’s precredit tax liability under
this article, as shown on its pro forma return.

(h) Consolidated or combined return may be required.
— If any affiliated group of corporations has not elected
to file a consolidated return, or if any unitary group of
corporations has not applied for permission to file a
combined return, the tax commissioner may require such
corporations to make a consolidated or combined return,
as the case may be, in order to clearly reflect taxable
capital of such corporations.

(i) Effective date. — This section shall apply to taxable
years beginning on or after the first day of January, one
thousand nine hundred ninety-six, except that financial
organizations that are part of an affiliated group may elect, after the effective date of this act of the Legislature, to file a consolidated return prepared in accordance with the provisions of this section and subject to applicable statutes of limitation, for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, but before the first day of January, one thousand nine hundred ninety-six, notwithstanding provisions then in effect prohibiting out-of-state financial organizations from filing consolidated returns for those years: Provided, That when the statute of limitations on filing an amended return for any of those years expires before the first day of July, one thousand nine hundred ninety-six, the consolidated return for such year, if filed, must be filed by said first day of July.

§11-23-27. Credit for franchise tax paid to another state.

(a) Effective for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, and notwithstanding any provisions of this code to the contrary, any financial organization having its commercial domicile in this state shall be allowed a credit against the tax imposed by this article for any taxable year for taxes paid to another state. That credit shall be equal in amount to the lesser of:

(1) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state, and which tax was based upon or measured by the financial organization's capital and was paid with respect to the same taxable year; or

(2) The portion of the tax actually paid that the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the law of such other state.

(b) Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in this section, and any refunds
of such taxes, made or received by such financial organi-
ization with respect to the taxable year, but after the due
date of the annual return required by this article for the
taxable year, including any extensions, shall likewise be
accounted for in the taxable year in which such addi-
tional payment is made or such refund is received by the
financial organization.

ARTICLE 24. CORPORATION NET INCOME TAX.
§11-24-7b. Special apportionment rules — Financial organi-
izations.

(a) General. — The Legislature hereby finds that the
genral formula set forth in section seven of this article
for apportioning the business income of corporations
taxable in this state as well as in another state is inap-
propriate for use by financial organizations due to the
particular characteristics of those organizations and the
manner in which their business is conducted. Accord-
ingly, the general formula set forth in section seven of
this article may not be used to apportion the business
income of such financial organizations, which shall use
only the apportionment formula and methods set forth in
this section.

(b) West Virginia financial organizations taxable in
another state. — The West Virginia taxable income of a
financial organization that has its commercial domicile
in this state and which is taxable in another state shall
be the sum of: (1) The nonbusiness income component of
its adjusted federal taxable income for the taxable year
which is allocated to this state as provided in subsection
(d), section seven of this article; plus (2) the total amount
of the business income component of its adjusted federal
taxable income for the taxable year, without apportion-
ment, regardless of where such business income was
derived: Provided, That such financial organization
shall be allowed as a credit against its tax liability under
this article the credit described in section twenty-four of
this article.
(c) Out-of-state financial organizations with business activities in this state. — The West Virginia taxable income of a financial organization that does not have its commercial domicile in this state but which regularly engages in business in this state shall be the sum of: (1) the nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided in subsection (d), section seven of this article; plus (2) the business income component of its adjusted federal taxable income for the taxable year which is apportioned to this state as provided in this section.

(d) Engaging in business — nexus presumptions and exclusions. — A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars. However, gross receipts from the following types of property (as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property) shall not be a factor in determining whether the owner is engaging in business in this state:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust or a regulated investment company;
(2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;
(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan, and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph, and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; and

(5) Any amounts held in an escrow or trust account with respect to property described above.

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

(1) “Commercial domicile”. See section three-a of this article;

(2) “Deposit” means: (A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler’s check on which the financial organization is primarily liable: Provided, That without limiting the generality of the term “money or its equivalent”, any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable or for a charge against a deposit
account or in settlement of checks, drafts or other
instruments forwarded to such bank for collection;

(B) Trust funds received or held by such financial
organization, whether held in the trust department or
held or deposited in any other department of such
financial organization;

(C) Money received or held by a financial organization
or the credit given for money or its equivalent received
or held by a financial organization in the usual course of
business for a special or specific purpose, regardless of
the legal relationship thereby established, including,
without being limited to, escrow funds, funds held as
security for an obligation due the financial organization
or other (including funds held as dealers' reserves) or for
securities loaned by the financial organization, funds
deposited by a debtor to meet maturing obligations,
funds deposited as advance payment on subscriptions to
United States government securities, funds held for
distribution or purchase of securities, funds held to meet
its acceptances or letters of credit, and withheld taxes:
Provided, That there shall not be included funds which
are received by the financial organization for immediate
application to the reduction of an indebtedness to the
receiving financial organization, or under condition that
the receipt thereof immediately reduces or extinguishes
such an indebtedness;

(D) Outstanding drafts (including advice or authoriza-
tion to charge a financial organization's balance in
another such organization), cashier's checks, money
orders or other officer's checks issued in the usual course
of business for any purpose, but not including those
issued in payment for services, dividends or purchases or
other costs or expenses of the financial organization
itself; and

(E) Money or its equivalent held as a credit balance by
a financial organization on behalf of its customer if such
entity is engaged in soliciting and holding such balances
in the regular course of its business;
(3) "Financial organization". See section three-a of this article; and

(4) "Sales" means, for purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (g) of this section, regardless of their source.

(f) **Apportionment rules.** — A financial organization not having its commercial domicile in this state which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in section six of this article, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (g) of this section.

(g) **Special gross receipts factor.** — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: *Provided,* That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six of this article:

(1) **Numerator.** — The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under section seven of this article, the following:

(A) Receipts from the lease or rental of real or tangible personal property (whether as the economic equivalent of an extension of credit or otherwise) if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if such security property is located in the state. In the event that such
security property is also located in one or more other
states, such receipts shall be presumed to be from
sources within this state, subject to rebuttal based upon
factors described in rules to be promulgated by the tax
commissioner, including the factor that the proceeds of
any such loans were applied and used by the borrower
entirely outside of this state;

(C) Interest income and other receipts from consumer
loans which are unsecured or are secured by intangible
property that are made to residents of this state, whether
at a place of business, by traveling loan officer, by mail,
by telephone or other electronic means or otherwise;

(D) Interest income and other receipts from com-
mercial loans and installment obligations which are unse-
cured or are secured by intangible property if and to the
extent that the borrower or debtor is a resident of or is
domiciled in this state: Provided, That such receipts are
presumed to be from sources in this state and such
presumption may be overcome by reference to factors
described in rules to be promulgated by the tax commis-
sioner, including the factor that the proceeds of any such
loans were applied and used by the borrower entirely
outside of this state;

(E) Interest income and other receipts from a financial
organization's syndication and participation in loans,
under the rules set forth in items (A) through (D), above;

(F) Interest income and other receipts, including
service charges, from financial institution credit card
and travel and entertainment credit card receivables and
credit card holders' fees if the borrower or debtor is a
resident of this state or if the billings for any such
receipts are regularly sent to an address in this state;

(G) Merchant discount income derived from financial
institutions credit card holder transactions with a mer-
chant located in this state. In the case of merchants
located within and without this state, only receipts from
merchant discounts attributable to sales made from
locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer's election, receipts from loan-related fees which are either: (I) “Pooled” or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (I) “Pooled” or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the state's decedent was a resident of this state immediately before death, or the grantor who either funded or established the trust is a resident of this state; or

(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for
251 a corporation or other business domiciled in, this state
252 and the economic benefit of such service is received in
253 this state;
254 (I) Gross receipts from the issuance of travelers' checks
255 and money orders if such checks and money orders are
256 purchased in this state; and
257 (J) All other receipts not attributed by this rule to a
258 state in which the taxpayer is taxable shall be attributed
259 pursuant to the laws of the state of the taxpayer's
260 commercial domicile.
261 (2) Denominator. — The denominator of the gross
262 receipts factor shall include all of the taxpayer’s gross
263 receipts from transactions of the kind included in the
264 numerator, but without regard to their source or situs.
265 (h) Effective date. — The provisions of this section
266 enacted as chapter one hundred sixty-seven, acts of the
267 Legislature, one thousand nine hundred ninety-one, shall
268 apply to all taxable years beginning on or after the first
269 day of January, one thousand nine hundred ninety-one.
270 Amendments to this section enacted in the year one
271 thousand nine hundred ninety-six shall apply to taxable
272 years beginning after the thirty-first day of December,
273 one thousand nine hundred ninety-five.
1 (a) Privilege to file consolidated return. — An affiliated
2 group of corporations (as defined for purposes of filing
3 a consolidated federal income tax return) shall, subject
4 to the provisions of this section and in accordance with
5 any regulations prescribed by the tax commissioner,
6 have the privilege of filing a consolidated return with
7 respect to the tax imposed by this article for the taxable
8 year in lieu of filing separate returns. The making of a
9 consolidated return shall be upon the condition that all
10 corporations which at any time during the taxable year
11 have been members of the affiliated group are included
12 in such return and consent to the filing of such return.
13 The filing of a consolidated return shall be considered as
such consent. When a corporation is a member of an affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for that part of the year during which it is a member of the affiliated group.

(b) Election binding. — If an affiliated group of corporations elects to file a consolidated return under this article for any taxable year ending after the thirtieth day of June, one thousand nine hundred eighty-seven, such election once made shall not be revoked for any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

(c) Consolidated return — financial organizations. — An affiliated group that includes one or more financial organizations may elect under this section to file a consolidated return when that affiliated group complies with all of the following rules:

(1) The affiliated group of which the financial organization is a member must file a federal consolidated income tax return for the taxable year.

(2) All members of the affiliated group included in the federal consolidated return must consent to being included in the consolidated return filed under this article. The filing of a consolidated return under this article is conclusive proof of such consent.

(3) The West Virginia taxable income of the affiliated group shall be the sum of:

(A) The pro forma West Virginia taxable income of all financial organizations having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(B) The pro forma West Virginia taxable income of all financial organizations not having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma
(C) The pro forma West Virginia taxable income of all other members included in the federal consolidated income tax return, as shown on a combined pro forma West Virginia return prepared for all such nonfinancial organization members, except that income, income adjustments and exclusions, apportionment factors and other items considered when determining tax liability shall not be included in the pro forma return prepared under this paragraph for a member that is totally exempt from tax under section five of this article, or for a member that is subject to a different special industry apportionment rule provided for in this article. When a different special industry apportionment rule applies, the West Virginia taxable income of a member(s) subject to that special industry apportionment rule shall be determined on a separate pro forma West Virginia return for the member(s) subject to that special industry rule and the West Virginia taxable income so determined shall be included in the consolidated return.

(4) The West Virginia consolidated return is prepared in accordance with regulations of the tax commissioner promulgated as provided in article three, chapter twenty-nine-a of this code.

(5) The filing of a consolidated return does not distort taxable income. In any proceeding, the burden of proof that taxpayer's method of filing does not distort taxable income shall be upon the taxpayer.

(d) Combined return. — A combined return may be filed under this article by a unitary group, including a unitary group that includes one or more financial organizations, only pursuant to the prior written approval of the tax commissioner. A request for permission to file a combined return must be filed on or before the statutory due date of the return, determined without inclusion of any extension of time to file the return. Permission to file a combined return may be granted by
the tax commissioner only when taxpayer submits evidence that conclusively establishes that failure to allow the filing of a combined return will result in an unconstitutional distortion of taxable income. When permission to file a combined return is granted, combined filing will be allowed for the year(s) stated in the tax commissioner's letter. The combined return must be filed in accordance with regulations of the tax commissioner promulgated in accordance with article three, chapter twenty-nine-a of this code.

(e) Method of filing under this article deemed controlling for purposes of other business taxes articles. — The taxpayer shall file on the same basis under article twenty-three of this chapter as such taxpayer files under this article for the taxable year.

(f) Regulations. — The tax commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations filing a consolidated return, or of any unitary group of corporations filing a combined return, and of each corporation in the affiliated or unitary group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the tax commissioner deems necessary to clearly reflect the income tax liability and the income factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(g) Computation and payment of tax. — In any case in which a consolidated or combined return is filed, or required to be filed, the tax due under this article from the affiliated or unitary group shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the tax commissioner, in effect on the last day prescribed by section thirteen of this article for the filing of such return, and such affiliated or unitary group, as the case may be, shall be treated as the taxpayer. However, when any member
of an affiliated or unitary group that files a consolidated
or combined return under this article is allowed to claim
credit against its tax liability under this article for
payment of any other tax, the amount of credit allowed
may not exceed that member’s proportionate share of the
affiliated or unitary group’s precredit tax liability under
this article, as shown on its pro forma return.

(h) Consolidated or combined return may be required.
- If any affiliated group of corporations has not elected
to file a consolidated return, or if any unitary group of
corporations has not applied for permission to file a
combined return, the tax commissioner may require such
corporations to make a consolidated or combined return,
as the case may be, in order to clearly reflect the taxable
income of such corporations.

(i) Effective date. — The amendments to this section
made by chapter one hundred seventy-nine, acts of the
Legislature in the year one thousand nine hundred
ninety, shall apply to all taxable years ending after the
eighth day of March, one thousand nine hundred ninety.
Amendments to this article enacted by this act in the
year one thousand nine hundred ninety-six, shall apply
to taxable years beginning on or after the first day of
January, one thousand nine hundred ninety-six, except
that financial organizations that are part of an affiliated
group may elect, after the effective date of this act, to
file a consolidated return prepared in accordance with
the provisions of this section, as amended, and subject to
applicable statutes of limitation, for taxable years
beginning on or after the first day of January, one
thousand nine hundred ninety-one, but before the first
day of January, one thousand nine hundred ninety-six,
notwithstanding provisions then in effect prohibiting
out-of-state financial organizations from filing consoli-
dated returns for those years: Provided, That when the
statute of limitation on filing an amended return for any
of those years expires before the first day of July, one
thousand nine hundred ninety-six, the consolidated
return for such year, if filed, must be filed by said first
§11-24-24. Credit for income tax paid to another state.

(a) Effective for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, and notwithstanding any provisions of this code to the contrary, any financial organization, the business activities of which take place, or are deemed to take place, entirely within this state, shall be allowed a credit against the tax imposed by this article for any taxable year for taxes paid to another state. That credit shall be equal in amount to the lesser of:

(1) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state, and which tax was based upon or measured by the financial organization's net income and was paid with respect to the same taxable year; or

(2) The amount of such tax the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the laws of such other state.

(b) Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in this section, and any refunds of such taxes, made or received by such financial organization with respect to the taxable year, but after the due date of the annual return required by this article for the taxable year, including any extensions, shall likewise be accounted for in the taxable year in which such additional payment is made or such refund is received by the financial organization.

§11-24-38. Deposit of revenue.

(a) Section thirteen of this article authorizes the tax commissioner to combine into one form the annual returns due under this article and article twenty-three of this chapter. To facilitate combining returns, reports
and declarations for these two taxes, and to allow a taxpayer to pay both taxes with one remittance, the amount of taxes collected under this article and article twenty-three of this chapter, including any additions to tax, penalties or interest collected with respect to such taxes, pursuant to a combined return, report or declaration shall be deposited in one account: Provided, That the tax commissioner shall keep such records as may be necessary to separately account for the amount of each tax collected, including additions to tax, penalties or interest collected with respect to each tax, during each fiscal year of the state.

(b) Overpayments of the tax imposed by article twenty-three of this chapter may be applied against tax due under this article for same taxable year, and overpayments of the tax imposed by this article may be applied against underpayment of the tax imposed by article twenty-three of this chapter for the same taxable year.

(c) The provisions of this section shall take effect upon passage.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 5th day of March, 1996.

Governor
PRESENTED TO THE
GOVERNOR
Date 2/28/96
Time 12:16 pm