ENROLLED

Committee Substitute for

SENATE BILL NO. 6066

(By Senators Simons and Helick)

PASSED April 9, 2005

In Effect 90 Days From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 666

(SENATORS SHARPE AND HELMICK, original sponsors)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-23-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-5 of said code, all relating to exemptions for certain insurance companies from business franchise tax and corporation net income tax; and limiting the exemptions to that portion of the tax base which is based on income subject to a tax upon premiums.

Be it enacted by the Legislature of West Virginia:

That §11-23-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-5 of said code be amended and reenacted, all to read as follows:

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and other organizations exempt from tax.
The following organizations and persons are exempt from the tax imposed by this article to the extent provided in this section:

(a) Natural persons doing business in this state that are not doing business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Natural persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons;

(b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption does not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly, in the generation of unrelated business income (as defined in the Internal Revenue Code) of any corporation or organization if the unrelated business income is subject to federal income tax;

(c) Insurance companies which pay this state a tax upon premiums and insurance companies that pay the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code;

(d) Production credit associations organized under the provisions of the federal Farm Credit Act of 1933: Provided, That this exemption does not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code;

(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the Labor Management Relations Act, one thousand nine hundred forty-seven), as amended, prior to the first day of January, one thousand nine hundred eighty-five;
(f) Any credit union organized under the provisions of chapter thirty-one or any other chapter of this code: Provided, That this exemption does not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;

(g) Any corporation organized under this code which is a political subdivision of the State of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code;

(h) Any corporation or partnership engaged in the activity of agriculture and farming, as defined in subdivision (8), subsection (b), section three of this article: Provided, That if a corporation or partnership is not exclusively engaged in that activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the Tax Commissioner, among its several activities and only that portion attributable to the activity of agriculture and farming is exempt from tax under this article;

(i) Any corporation or partnership licensed under article twenty-three, chapter nineteen of this code to conduct horse or dog racing meetings or a pari-mutuel system of wagering: Provided, That if the corporation or partnership is not exclusively engaged in this activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the Tax Commissioner, among its several activities and only that portion attributable to the activity of conducting a horse or dog racing meeting or a pari-mutuel system of wagering is exempt from tax under this article;

(j) For those tax years beginning after the thirtieth day of June, one thousand nine hundred ninety-eight, any corporation or partnership operating as a hunting club: Provided, That the corporation or partnership distributes no income or dividends to its owners or stockholders. For the purposes of this subsection, a hunting club is a group
71 of persons owning land which is used principally for
72 hunting purposes by the members of the club and guests,
73 and where any charges made for hunting are principally
74 for the purpose of defraying the costs of operating and
75 maintaining the club and club properties or establishing a
76 reasonable reserve to meet the operating and maintenance
77 costs of the club. The Tax Commissioner shall, by legisla-
78 tive rule promulgated in accordance with article three,
79 chapter twenty-nine of this code, further prescribe the
80 definition of a hunting club and the manner and method in
81 which this credit may be claimed; and
82
83 (k) For tax years beginning after the thirty-first day of
84 December, two thousand two, any person or other organi-
85 zation engaged in the activity of providing venture capital
86 to West Virginia businesses: Provided, That if the person
87 or organization is not exclusively engaged in that activity,
88 only that portion of its tax base under this article that is
89 attributable to the providing of venture capital to West
90 Virginia businesses is exempt from tax under this article
91 and its tax liability under this article is determined by
92 multiplying its precredit tax liability by a fraction equal
93 to one minus a fraction, the numerator of which is its gross
94 receipts attributable to its venture capital activities in this
95 state and the denominator of which is its total gross
96 receipts from all of its business activities in this state. For
97 purposes of this exemption, a “person or organization
98 engaged in the activity of providing venture capital to
99 West Virginia business” means a certified West Virginia
100 capital company as defined in section four, article one,

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-5. Corporations exempt from tax.

1 The following corporations shall be exempt from the tax
2 imposed by this article to the extent provided in this
3 section:
(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

(b) Insurance companies which pay this state a tax upon premiums and insurance companies that pay the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code.

(c) Production credit associations organized under the provisions of the federal Farm Credit Act of 1933: Provided, That the exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(d) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended: Provided, That said corporations shall file the information return required by section thirteen-b of this article.

(e) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the Labor Management Relations Act, one thousand nine hundred forty-seven), as amended, prior to the first day of January, one thousand nine hundred sixty-seven.
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 approved this the Day of Mary 2005.

Governor