

HB 4420
(veto)

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4420**

(By Delegates White, Kominar and Boggs)

Passed March 7, 2008

In Effect January 1, 2009

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WEST VIRGINIA
LEGISLATURE

H. B. 4420

(BY DELEGATES WHITE, KOMINAR AND BOGGS)

[Passed March 7, 2008; in effect January 1, 2009.]

AN ACT to amend and reenact §11-24-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-24-4b, all relating to providing the manner in which the corporate net income tax is to be imposed on certain real estate investment trusts and regulated investment companies.

Be it enacted by the Legislature of West Virginia:

That §11-24-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-24-4b, all to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.

1 For purposes of this article:

2 (1) *Business income.* -- The term "business income"
3 means income arising from transactions and activity in the
4 regular course of the taxpayer's trade or business and
5 includes income from tangible and intangible property if the
6 acquisition, management and disposition of the property or
7 the rendering of services in connection therewith constitute
8 integral parts of the taxpayer's regular trade or business
9 operations and includes all income which is apportionable
10 under the Constitution of the United States.

11 (2) Combined group means the group of all persons
12 whose income and apportionment factors are required to be
13 taken into account pursuant to subsection (a) or (b), section
14 thirteen-a of this article in determining the taxpayer's share
15 of the net business income or loss apportionable to this state.

16 (3) *Commercial domicile.* -- The term "commercial
17 domicile" means the principal place from which the trade or
18 business of the taxpayer is directed or managed: *Provided,*
19 That the commercial domicile of a financial organization,
20 which is subject to regulation as such, shall be at the place
21 designated as its principal office with its regulating authority.

22 (4) *Compensation.* -- The term "compensation" means
23 wages, salaries, commissions and any other form of
24 remuneration paid to employees for personal services.

25 (5) *Corporation.* -- "Corporation" means any
26 corporation as defined by the laws of this state or
27 organization of any kind treated as a corporation for tax
28 purposes under the laws of this state, wherever located,
29 which if it were doing business in this state would be a
30 "taxpayer". The business conducted by a partnership which
31 is directly or indirectly held by a corporation shall be

32 considered the business of the corporation to the extent of the
33 corporation's distributive share of the partnership income,
34 inclusive of guaranteed payments to the extent prescribed by
35 regulation. The term "corporation" includes a joint-stock
36 company and any association or other organization which is
37 taxable as a corporation under the federal income tax law.

38 (6) *Delegate*. -- The term "delegate" in the phrase "or
39 his or her delegate", when used in reference to the Tax
40 Commissioner, means any officer or employee of the state
41 Tax Department duly authorized by the Tax Commissioner
42 directly, or indirectly by one or more redelegations of
43 authority, to perform the functions mentioned or described in
44 this article or regulations promulgated thereunder.

45 (7) *Domestic corporation*. -- The term "domestic
46 corporation" means any corporation organized under the laws
47 of West Virginia and certain corporations organized under
48 the laws of the State of Virginia before the twentieth day of
49 June, one thousand eight hundred sixty-three. Every other
50 corporation is a foreign corporation.

51 (8) *Engaging in business*. -- The term "engaging in
52 business" or "doing business" means any activity of a
53 corporation which enjoys the benefits and protection of
54 government and laws in this state.

55 (9) *Federal Form 1120*. -- The term "Federal Form
56 1120" means the annual federal income tax return of any
57 corporation made pursuant to the United States Internal
58 Revenue Code of 1986, as amended, or in successor
59 provisions of the laws of the United States, in respect to the
60 federal taxable income of a corporation, and filed with the
61 federal Internal Revenue Service. In the case of a
62 corporation that elects to file a federal income tax return as
63 part of an affiliated group, but files as a separate corporation

64 under this article, then as to such corporation Federal Form
65 1120 means its pro forma Federal Form 1120.

66 (10) *Fiduciary*. -- The term “fiduciary” means, and
67 includes, a guardian, trustee, executor, administrator,
68 receiver, conservator or any person acting in any fiduciary
69 capacity for any person.

70 (11) *Financial organization*. -- The term “financial
71 organization” means:

72 (A) *A holding company or a subsidiary thereof*. -- As
73 used in this section “holding company” means a corporation
74 registered under the federal Bank Holding Company Act of
75 1956 or registered as a savings and loan holding company
76 other than a diversified savings and loan holding company
77 (as defined in Section 408(a)(1)(F) of the federal National
78 Housing Act (12 U.S.C. §1730(a)(1)(F));

79 (B) *A regulated financial corporation or a subsidiary*
80 *thereof*. — As used in this section “regulated financial
81 corporation” means:

82 (i) An institution, the deposits, shares or accounts of
83 which are insured under the Federal Deposit Insurance Act or
84 by the federal Savings and Loan Insurance Corporation;

85 (ii) An institution that is a member of a federal home
86 loan bank;

87 (iii) Any other bank or thrift institution incorporated or
88 organized under the laws of a state that is engaged in the
89 business of receiving deposits;

90 (iv) A credit union incorporated and organized under the
91 laws of this state;

92 (v) A production credit association organized under 12
93 U.S.C. §2071;

94 (vi) A corporation organized under 12 U.S.C. §611
95 through §631 (an Edge Act corporation); or

96 (vii) A federal or state agency or branch of a foreign
97 bank (as defined in 12 U.S.C. §3101); or

98 (C) A corporation which derives more than fifty percent
99 of its gross business income from one or more of the
100 following activities:

101 (i) Making, acquiring, selling or servicing loans or
102 extensions of credit. Loans and extensions of credit include:

103 (I) Secured or unsecured consumer loans;

104 (II) Installment obligations;

105 (III) Mortgages or other loans secured by real estate or
106 tangible personal property;

107 (IV) Credit card loans;

108 (V) Secured and unsecured commercial loans of any
109 type; and

110 (VI) Loans arising in factoring.

111 (ii) Leasing or acting as an agent, broker or advisor in
112 connection with leasing real and personal property that is the
113 economic equivalent of an extension of credit (as defined by
114 the Federal Reserve Board in 12 C.F.R. 225.25(b)(5)).

115 (iii) Operating a credit card business.

116 (iv) Rendering estate or trust services.

117 (v) Receiving, maintaining or otherwise handling
118 deposits.

119 (vi) Engaging in any other activity with an economic
120 effect comparable to those activities described in item (i), (ii),
121 (iii), (iv) or (v) of this paragraph.

122 (12) *Fiscal year*. -- The term “fiscal year” means an
123 accounting period of twelve months ending on any day other
124 than the last day of December and on the basis of which the
125 taxpayer is required to report for federal income tax purposes.

126 (13) *Includes and including*. -- The terms “includes” and
127 “including”, when used in a definition contained in this
128 article, shall not be deemed to exclude other things otherwise
129 within the meaning of the term being defined.

130 (14) “Internal Revenue Code” means Title 26 of the
131 United States Code, as amended, without regard to
132 application of federal treaties unless expressly made
133 applicable to states of the United States.

134 (15) *Nonbusiness income*. -- The term “nonbusiness
135 income” means all income other than business income.

136 (16) “Partnership” means a general or limited
137 partnership, or organization of any kind treated as a
138 partnership for tax purposes under the laws of this state.

139 (17) *Person*. -- The term “person” is to be deemed
140 interchangeable with the term “corporation” in this section.
141 The term “person” means any individual, firm, partnership,
142 general partner of a partnership, limited liability company,
143 registered limited liability partnership, foreign limited

144 liability partnership, association, corporation (whether or not
145 the corporation is, or would be if doing business in this state,
146 subject to the tax imposed by this article), company,
147 syndicate, estate, trust, business trust, trustee, trustee in
148 bankruptcy, receiver, executor, administrator, assignee or
149 organization of any kind.

150 (18) *Pro forma return*. -- The term “pro forma return”
151 when used in this article means the return which the taxpayer
152 would have filed with the Internal Revenue Service had it not
153 elected to file federally as part of an affiliated group.

154 (19) *Public utility*. -- The term “public utility” means
155 any business activity to which the jurisdiction of the Public
156 Service Commission of West Virginia extends under section
157 one, article two, chapter twenty-four of this code.

158 (20) *Qualified real estate investment trust*. -- The term
159 “Qualified Real Estate Investment Trust” means any real
160 estate invest trust where no single entity owns or controls,
161 directly or indirectly, constructively or otherwise, fifty
162 percent or more of the voting power or value of the beneficial
163 interests or shares of the trust, if the single entity is

164 (A) Subject to the provisions of subchapter C, chapter I,
165 subtitle A, title 26 of the United States Code, as amended;

166 (B) Not exempt from federal income tax pursuant to the
167 provisions of section 501 of the Internal Revenue Code of
168 1986, as amended; and

169 (C) Not a real estate invest trust as defined in this
170 section or a qualified real estate invest trust subsidiary under
171 section 856(i) of the Internal Revenue Code of 1986, as
172 amended.

173 (21) *Qualified regulated investment company.* -- The
174 term "Qualified Regulated Investment Company" means any
175 regulated company where no single entity owns or controls,
176 directly or indirectly, constructively or otherwise, fifty
177 percent or more of the voting power or value of the beneficial
178 interests or shares of the company, if the single entity is:

179 (A) Subject to the provision of subchapter C, chapter 1,
180 subtitle A. title 26 of the United States Code, as amended;

181 (B) Not exempt from federal income tax pursuant to the
182 provision of section 501 of the Internal Revenue Code of
183 1986, as amended; and

184 (C) Not a regulated investment company as defined in
185 section 3 of the Investment Company Act of 1940, as
186 amended, 15 U.S.C. 80a-3.

187 (22) *Real estate investment trust.* -- The term "Real
188 Estate Investment Trust" has the meaning ascribed to such
189 term in section 856 of the Internal Revenue Code of 1986, as
190 amended.

191 (23) *Regulated investment company.* -- The term
192 "Regulated Investment Company" has the same meaning as
193 ascribed to such term in section 851 of the Internal Revenue
194 Code of 1986, as amended.

195 (24) *Sales.* -- The term "sales" means all gross receipts
196 of the taxpayer that are "business income", as defined in this
197 section.

198 (25) *State.* -- The term "state" means any state of the
199 United States, the District of Columbia, the Commonwealth
200 of Puerto Rico, any territory or possession of the United
201 States and any foreign country or political subdivision
202 thereof.

203 (26) *Taxable year, tax year.* -- The term “taxable year”
204 or “tax year” means the taxable year for which the taxable
205 income of the taxpayer is computed under the federal income
206 tax law.

207 (27) *Tax.* -- The term “tax” includes, within its meaning,
208 interest and additions to tax, unless the intention to give it a
209 more limited meaning is disclosed by the context.

210 (28) *Tax Commissioner.* -- The term “Tax
211 Commissioner” means the Tax Commissioner of the State of
212 West Virginia or his or her delegate.

213 (29) “*Tax haven*” means a jurisdiction that, for a
214 particular tax year in question: (A) Is identified by the
215 Organization for Economic Cooperation and Development as
216 a tax haven or as having a harmful preferential tax regime; or
217 (B) a jurisdiction that has no, or nominal, effective tax on the
218 relevant income and: (i) That has laws or practices that
219 prevent effective exchange of information for tax purposes
220 with other governments regarding taxpayers subject to, or
221 benefitting from, the tax regime; or (ii) that lacks
222 transparency. For purposes of this definition, a tax regime
223 lacks transparency if the details of legislative, legal or
224 administrative provisions are not open to public scrutiny and
225 apparent, or are not consistently applied among similarly
226 situated taxpayers; (iii) facilitates the establishment of
227 foreign-owned entities without the need for a local
228 substantive presence or prohibits these entities from having
229 any commercial impact on the local economy; (iv) explicitly
230 or implicitly excludes the jurisdiction’s resident taxpayers
231 from taking advantage of the tax regime’s benefits or
232 prohibits enterprises that benefit from the regime from
233 operating in the jurisdiction’s domestic market; or (v) has
234 created a tax regime which is favorable for tax avoidance,
235 based upon an overall assessment of relevant factors,

236 including whether the jurisdiction has a significant untaxed
237 offshore financial or other services sector relative to its
238 overall economy. For purposes of this definition, the phrase
239 “tax regime” means a set or system of rules, laws, regulations
240 or practices by which taxes are imposed on any person,
241 corporation or entity, or on any income, property, incident,
242 indicia or activity pursuant to governmental authority.

243 (30) *Taxpayer*. -- The term “taxpayer” means any person
244 subject to the tax imposed by this article.

245 (31) *This code*. -- The term “this code” means the Code
246 of West Virginia, one thousand nine hundred thirty-one, as
247 amended.

248 (32) *This State*. -- The term “this state” means the State
249 of West Virginia.

250 (33) “*United States*” means the United States of America
251 and includes all of the states of the United States, the District
252 of Columbia and United States territories and possessions.

253 (34) “*Unitary business*” means a single economic
254 enterprise that is made up either of separate parts of a single
255 business entity or of a commonly controlled group of
256 business entities that are sufficiently interdependent,
257 integrated and interrelated through their activities so as to
258 provide a synergy and mutual benefit that produces a sharing
259 or exchange of value among them and a significant flow of
260 value to the separate parts.

261 (35) *West Virginia taxable income*. -- The term “West
262 Virginia taxable income” means the taxable income of a
263 corporation as defined by the laws of the United States for
264 federal income tax purposes, adjusted, as provided in this
265 article: *Provided*, That in the case of a corporation having

266 income from business activity which is taxable without this
267 state, its “West Virginia taxable income” shall be such
268 portion of its taxable income as so defined and adjusted as is
269 allocated or apportioned to this state under the provisions of
270 this article.

**§11-24-4b. Regulated investment companies and real estate
investment trusts subject to tax.**

1 (a) The tax imposed by this article shall be imposed
2 upon regulated investment companies as defined by this
3 article, and shall be computed only upon that part of the net
4 income of the regulated investment company which is subject
5 to federal income tax as provided in sections 852 and 4982 of
6 the Internal Revenue Code of 1986, as amended, except as
7 otherwise provided in this section.

8 (b) The dividend paid deduction otherwise allowed by
9 a federal law in computing net income of a regulated
10 investment company that is subject to federal income tax
11 shall be added back in computing the tax imposed by this
12 article unless the regulated invested company is a qualified
13 regulated investment company, as defined in this article.

14 (c) The tax imposed by this article shall be imposed
15 upon real estate investment trusts and shall be computed only
16 upon that part of the net income of the real estate investment
17 trust which is subject to federal income tax as provided in
18 sections 857 and 858 of the Internal Revenue Code of 1986,
19 as amended, except as otherwise provided in this section.

20 (d) The dividend paid deduction otherwise allowed by
21 federal law in computing net income of real estate investment
22 trusts that is subject to federal income tax shall be added back
23 in computing the tax imposed by this article unless the real
24 estate investment trust is either:

25 (1) Publicly traded on an established securities market;
26 or.

27 (2) A qualified real estate investment trust, as defined in
28 this article.

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



Chairman Senate Committee



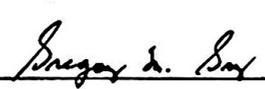
Chairman House Committee

Originating in the House.

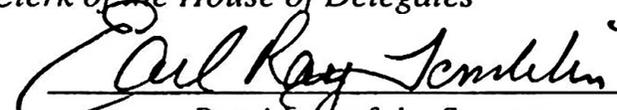
In effect January 1, 2009.



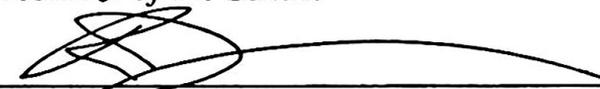
Clerk of the Senate



Clerk of the House of Delegates

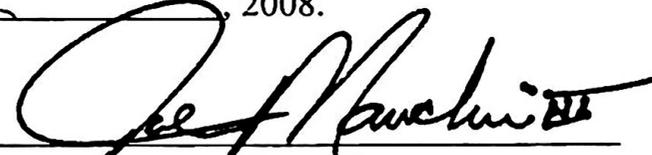


President of the Senate



Speaker of the House of Delegates

The within is disapproved this the 12th
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 12 2008

Time 11:25 AM