

SB 680

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**WEST VIRGINIA LEGISLATURE**

**SEVENTY-EIGHTH LEGISLATURE**

**REGULAR SESSION, 2008**



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 680**

**(BY SENATORS TOMBLIN, MR. PRESIDENT, AND  
CARUTH, BY REQUEST OF THE EXECUTIVE)**

[Passed March 8 2008; in effect ninety days from passage.]

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SECRETARY OF STATE

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A BILL to repeal §11-23-5b of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13S-4 of said code; to amend said code by adding thereto a new article, designated §11-13Y-1, §11-13Y-2, §11-13Y-3, §11-13Y-4, §11-13Y-5, §11-13Y-6, §11-13Y-7, §11-13Y-8 and §11-13Y-9; to amend and reenact §11-23-5a and §11-23-6 of said code; to amend said code by adding thereto a new section, designated §11-23-17b; to amend and reenact §11-

24-3a, §11-24-4, §11-24-7, §11-24-7b, §11-24-13a, §11-24-13c, §11-24-13d, §11-24-13f and §11-24-42 of said code; and to amend said code by adding thereto two new sections, designated §11-24-3b and 11-24-9b, all relating to business taxes generally; specifying percentage of taxes subject to offset by manufacturing investment tax credit; creating credit for the value of certain ad valorem taxes paid; requiring report on the application of the credit; providing definitions relating to business franchise tax; providing for eligibility of financial organizations for tax credits; specifying amount of credit allowed; providing for treatment of goodwill associated with certain acquisitions; specifying reductions of business franchise tax rate; defining terms relating to corporate net income tax; specifying general meaning relating to the term "tax haven"; specifying imposition of tax and rates; specifying reductions of corporation net income tax rate and suspension of reductions in certain circumstances; specifying nullity for designated provisions; specifying removal of nullity for designated provisions; specifying apportionment rules for financial organizations; specifying treatment of insurance companies; specifying method of filing; specifying application of designated net operating losses; specifying treatment of designated dividends; mandating reporting on water's-edge unitary basis; specifying election to report based on worldwide unitary basis; specifying authority of Tax Commissioner to prescribe reporting basis; and establishing effective dates.

*Be it enacted by the Legislature of West Virginia:*

That §11-23-5b of the Code of West Virginia, 1931, as amended, be repealed; that §11-13S-4 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-13Y-1, §11-13Y-2, §11-13Y-3, §11-

13Y-4, §11-13Y-5, §11-13Y-6, §11-13Y-7, §11-13Y-8 and §11-13Y-9; that §11-23-5a and §11-23-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-23-17b; that §11-24-3a, §11-24-4, §11-24-7, §11-24-7b, §11-24-13a, §11-24-13c, §11-24-13d, §11-24-13f and §11-24-42 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-24-3b and 11-24-9b, all to read as follows:

**ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

**§11-13S-4. Amount of credit allowed for manufacturing investment.**

1     (a) *Credit allowed.* — There is allowed to eligible  
2 taxpayers and to persons described in subdivision (5),  
3 subsection (b) of this section a credit against the taxes  
4 imposed by articles thirteen-a, twenty-three and  
5 twenty-four of this chapter. The amount of credit shall  
6 be determined as hereinafter provided in this section.

7     (b) *Amount of credit allowable.* — The amount of  
8 allowable credit under this article is equal to five  
9 percent of the qualified manufacturing investment (as  
10 determined in section five of this article) and shall  
11 reduce the severance tax, imposed under article  
12 thirteen-a of this chapter, the business franchise tax  
13 imposed under article twenty-three of this chapter and  
14 the corporation net income tax imposed under article  
15 twenty-four of this chapter, in that order, subject to the  
16 following conditions and limitations:

17     (1) The amount of credit allowable is applied over a  
18 ten-year period, at the rate of one-tenth thereof per  
19 taxable year, beginning with the taxable year in which

20 the property purchased for manufacturing investment  
21 is first placed in service or use in this state;

22 (2) *Severance tax.* — The credit is applied to reduce  
23 the severance tax imposed under article thirteen-a of  
24 this chapter (determined before application of the credit  
25 allowed by section three, article twelve-b of this chapter  
26 and before any other allowable credits against tax and  
27 before application of the annual exemption allowed by  
28 section ten, article thirteen-a of this chapter). The  
29 amount of annual credit allowed may not reduce the  
30 severance tax, imposed under article thirteen-a of this  
31 chapter, below fifty percent of the amount which would  
32 be imposed for such taxable year in the absence of this  
33 credit against tax: *Provided*, That for tax years  
34 beginning on and after the first day of January, two  
35 thousand nine, the amount of annual credit allowed may  
36 not reduce the severance tax, imposed under article  
37 thirteen-a of this chapter, below forty percent of the  
38 amount which would be imposed for such taxable year  
39 in the absence of this credit against tax. When in any  
40 taxable year the taxpayer is entitled to claim credit  
41 under this article and article thirteen-d of this chapter,  
42 the total amount of all credits allowable for the taxable  
43 year may not reduce the amount of the severance tax,  
44 imposed under article thirteen-a of this chapter, below  
45 fifty percent of the amount which would be imposed for  
46 such taxable year (determined before application of the  
47 credit allowed by section three, article twelve-b of this  
48 chapter and before any other allowable credits against  
49 tax and before application of the annual exemption  
50 allowed by section ten, article thirteen-a of this  
51 chapter): *Provided, however*, That when in any taxable  
52 year beginning on and after the first day of January,  
53 two thousand nine, the taxpayer is entitled to claim

54 credit under this article and article thirteen-d of this  
55 chapter, the total amount of all credits allowable for the  
56 taxable year may not reduce the amount of the  
57 severance tax, imposed under article thirteen-a of this  
58 chapter, below forty percent of the amount which would  
59 be imposed for such taxable year as determined before  
60 application of the credit allowed by section three,  
61 article twelve-b of this chapter and before any other  
62 allowable credits against tax and before application of  
63 the annual exemption allowed by section ten, article  
64 thirteen-a of this chapter;

65 (3) *Business franchise tax.* —

66 After application of subdivision (2) of this subsection,  
67 any unused credit is next applied to reduce the business  
68 franchise tax imposed under article twenty-three of this  
69 chapter (determined after application of the credits  
70 against tax provided in section seventeen, article  
71 twenty-three of this chapter, but before application of  
72 any other allowable credits against tax). The amount of  
73 annual credit allowed will not reduce the business  
74 franchise tax, imposed under article twenty-three of  
75 this chapter, below fifty percent of the amount which  
76 would be imposed for such taxable year in the absence  
77 of this credit against tax: *Provided*, That for tax years  
78 beginning on and after the first day of January, two  
79 thousand nine, the amount of annual credit allowed will  
80 not reduce the business franchise tax, imposed under  
81 article twenty-three of this chapter, below forty percent  
82 of the amount which would be imposed for such taxable  
83 year in the absence of this credit against tax. When in  
84 any taxable year the taxpayer is entitled to claim credit  
85 under this article and article thirteen-d of this chapter,  
86 the total amount of all credits allowable for the taxable

87 year will not reduce the amount of the business  
88 franchise tax, imposed under article twenty-three of  
89 this chapter, below fifty percent of the amount which  
90 would be imposed for the taxable year (determined after  
91 application of the credits against tax provided in section  
92 seventeen, article twenty-three of this chapter, but  
93 before application of any other allowable credits against  
94 tax): *Provided, however,* That when in any taxable year  
95 beginning on and after the first day of January, two  
96 thousand nine, the taxpayer is entitled to claim credit  
97 under this article and article thirteen-d of this chapter,  
98 the total amount of all credits allowable for the taxable  
99 year will not reduce the amount of the business  
100 franchise tax, imposed under article twenty-three of  
101 this chapter, below forty percent of the amount which  
102 would be imposed for the taxable year as determined  
103 after application of the credits against tax provided in  
104 section seventeen, article twenty-three of this chapter,  
105 but before application of any other allowable credits  
106 against tax;

107 (4) *Corporation net income tax.* —

108 After application of subdivision (3) of this subsection,  
109 any unused credit is next applied to reduce the  
110 corporation net income tax imposed under article  
111 twenty-four of this chapter (determined before  
112 application of any other allowable credits against tax).  
113 The amount of annual credit allowed will not reduce  
114 corporation net income tax, imposed under article  
115 twenty-four of this chapter, below fifty percent of the  
116 amount which would be imposed for such taxable year  
117 in the absence of this credit against tax: *Provided,* That  
118 for tax years beginning on and after the first day of  
119 January, two thousand nine, the amount of annual

120 credit allowed will not reduce corporation net income  
121 tax, imposed under article twenty-four of this chapter,  
122 below forty percent of the amount which would be  
123 imposed for such taxable year in the absence of this  
124 credit against tax. When in any taxable year the  
125 taxpayer is entitled to claim credit under this article  
126 and article thirteen-d of this chapter, the total amount  
127 of all credits allowable for the taxable year may not  
128 reduce the amount of the corporation net income tax,  
129 imposed under article twenty-four of this chapter,  
130 below fifty percent of the amount which would be  
131 imposed for the taxable year (determined before  
132 application of any other allowable credits against tax):  
133 *Provided, however,* That when in any taxable year  
134 beginning on and after the first day of January, two  
135 thousand nine, the taxpayer is entitled to claim credit  
136 under this article and article thirteen-d of this chapter,  
137 the total amount of all credits allowable for the taxable  
138 year may not reduce the amount of the corporation net  
139 income tax, imposed under article twenty-four of this  
140 chapter, below forty percent of the amount which would  
141 be imposed for the taxable year as determined before  
142 application of any other allowable credits against tax;

143 (5) *Pass-through entities.* —

144 (A) If the eligible taxpayer is a limited liability  
145 company, small business corporation or a partnership,  
146 then any unused credit (after application of subdivisions  
147 (2), (3) and (4) of this subsection) is allowed as a credit  
148 against the taxes imposed by article twenty-four of this  
149 chapter on owners of the eligible taxpayer on the  
150 conduit income directly derived from the eligible  
151 taxpayer by its owners. Only those portions of the tax  
152 imposed by article twenty-four of this chapter that are

153 imposed on income directly derived by the owner from  
154 the eligible taxpayer are subject to offset by this credit.

155 (B) The amount of annual credit allowed will not  
156 reduce corporation net income tax, imposed under  
157 article twenty-four of this chapter, below fifty percent  
158 of the amount which would be imposed on the conduit  
159 income directly derived from the eligible taxpayer by  
160 each owner for such taxable year in the absence of this  
161 credit against the taxes (determined before application  
162 of any other allowable credits against tax): *Provided,*  
163 That for tax years beginning on and after the first day  
164 of January, two thousand nine, the amount of annual  
165 credit allowed will not reduce corporation net income  
166 tax, imposed under article twenty-four of this chapter,  
167 below forty percent of the amount which would be  
168 imposed on the conduit income directly derived from  
169 the eligible taxpayer by each owner for such taxable  
170 year in the absence of this credit against the taxes as  
171 determined before application of any other allowable  
172 credits against tax.

173 (C) When in any taxable year the taxpayer is entitled  
174 to claim credit under this article and article thirteen-d  
175 of this chapter, the total amount of all credits allowable  
176 for the taxable year will not reduce the corporation net  
177 income tax imposed on the conduit income directly  
178 derived from the eligible taxpayer by each owner below  
179 fifty percent of the amount that would be imposed for  
180 such taxable year on the conduit income (determined  
181 before application of any other allowable credits against  
182 tax): *Provided,* That when in any taxable year  
183 beginning on and after the first day of January, two  
184 thousand nine, the taxpayer is entitled to claim credit  
185 under this article and article thirteen-d of this chapter,

186 the total amount of all credits allowable for the taxable  
187 year will not reduce the corporation net income tax  
188 imposed on the conduit income directly derived from  
189 the eligible taxpayer by each owner below forty percent  
190 of the amount that would be imposed for such taxable  
191 year on the conduit income as determined before  
192 application of any other allowable credits against tax;

193 (6) Small business corporations, limited liability  
194 companies, partnerships and other unincorporated  
195 organizations shall allocate any unused credit after  
196 application of subdivisions (2), (3) and (4) of this  
197 subsection among their members in the same manner as  
198 profits and losses are allocated for the taxable year; and

199 (7) No credit is allowed under this article against any  
200 tax imposed by article twenty-one of this chapter.

201 (c) No carryover to a subsequent taxable year or  
202 carryback to a prior taxable year is allowed for the  
203 amount of any unused portion of any annual credit  
204 allowance. Any unused credit is forfeited.

205 (d) *Application for credit required.* —

206 (1) *Application required.* — Notwithstanding any  
207 provision of this article to the contrary, no credit is  
208 allowed or may be applied under this article for any  
209 qualified investment property placed in service or use  
210 until the person claiming the credit makes written  
211 application to the Tax Commissioner for allowance of  
212 credit as provided in this section. This application shall  
213 be in the form prescribed by the Tax Commissioner and  
214 shall provide the number and type of jobs created, if  
215 any, by the manufacturing investment, the average wage

216 rates and benefits paid to employees filling the new jobs  
217 and any other information the Tax Commissioner may  
218 require. This application shall be filed with the Tax  
219 Commissioner no later than the last day for filing the  
220 annual return, determined by including any authorized  
221 extension of time for filing the return, required under  
222 article twenty-one or twenty-four of this chapter for the  
223 taxable year in which the property to which the credit  
224 relates is placed in service or use.

225 (2) *Failure to file.* — The failure to timely apply the  
226 application for credit under this section results in  
227 forfeiture of fifty percent of the annual credit allowance  
228 otherwise allowable under this article. This penalty  
229 applies annually until the application is filed.

**ARTICLE 13Y. THE WEST VIRGINIA MANUFACTURING PROPERTY TAX  
ADJUSTMENT ACT.**

**§11-13Y-1. Short title.**

1 This article shall be known and cited as the West  
2 Virginia Manufacturing Property Tax Adjustment Act.

**§11-13Y-2. Definitions.**

1 (a) *General.* — When used in this article, or in the  
2 administration of this article, terms defined in  
3 subsection (b) of this section have the meanings ascribed  
4 to them by this section unless a different meaning is  
5 clearly required by the context in which the term is  
6 used.

7 (b) *Terms defined.* —

8 (1) “Affiliate” means and includes all persons, as

9 defined in this section, which are affiliates of each other  
10 when either directly or indirectly:

11 (A) One person controls or has the power to control  
12 the other, or

13 (B) A third party or third parties control or have the  
14 power to control two persons, the two thus being  
15 affiliates. In determining whether concerns are  
16 independently owned and operated and whether or not  
17 an affiliation exists, consideration shall be given to all  
18 appropriate factors, including common ownership,  
19 common management and contractual relationships.

20 (2) "Commissioner" or "Tax Commissioner" means the  
21 Tax Commissioner of the State of West Virginia or the  
22 Tax Commissioner's delegate.

23 (3) "Corporation" means any corporation, joint-stock  
24 company or association and any business conducted by  
25 a trustee or trustees wherein interest or ownership is  
26 evidenced by a certificate of interest or ownership or  
27 similar written instrument.

28 (4) "Delegate", when used in reference to the Tax  
29 Commissioner, means any officer or employee of the Tax  
30 Division of the Department of Revenue duly authorized  
31 by the Tax Commissioner directly, or indirectly by one  
32 or more redelegations of authority, to perform the  
33 functions mentioned or described in this article.

34 (5) "Eligible taxpayer" means any manufacturing  
35 business that is subject to the tax imposed under article  
36 twenty-three or twenty-four of this chapter, or both:  
37 *Provided*, That taxpayers owning property assessed by

38 the Board of Public Works are not eligible taxpayers for  
39 purposes of this article. "Eligible taxpayer" also means  
40 and includes those members of an affiliated group of  
41 taxpayers engaged in a unitary business, in which one  
42 or more members of the affiliated group is a person  
43 subject to the tax imposed under article twenty-three or  
44 article twenty-four of this chapter, or both. Affiliates  
45 not engaged in the unitary business do not qualify as  
46 eligible taxpayers.

47 (6) "Manufacturing business" means any business  
48 primarily engaged in business activity classified as  
49 having a sector identifier, consisting of the first two  
50 digits of the six-digit North American Industry  
51 Classification System code number, of thirty-one,  
52 thirty-two or thirty-three that also paid ad valorem  
53 property tax on manufacturing inventory to one or more  
54 West Virginia counties during the taxable year.

55 (7) "Manufacturing inventory" means and is limited to  
56 raw materials, goods in process and finished goods of a  
57 business primarily engaged in business activity  
58 classified as having a sector identifier, consisting of the  
59 first two digits of the six-digit North American Industry  
60 Classification System code number, of thirty-one,  
61 thirty-two or thirty-three.

62 (8) "Natural person" or "individual" means a human  
63 being.

64 (9) "Partnership" and "partner" means and includes  
65 a syndicate, group, pool, joint venture or other  
66 unincorporated organization through or by means of  
67 which any business, financial operation or venture is  
68 carried on and which is not a trust or estate, a

69 corporation or a sole proprietorship. The term  
70 "partner" includes a member in a syndicate, group,  
71 pool, joint venture or organization.

72 (10) "Person" means and includes any natural person,  
73 corporation, limited liability company or partnership.

74 (11) "Related entity", "related person", "entity related  
75 to" or "person related to" means:

76 (A) An individual, corporation, partnership, affiliate,  
77 association or trust or any combination or group thereof  
78 controlled by the taxpayer;

79 (B) An individual, corporation, partnership, affiliate,  
80 association or trust or any combination or group thereof  
81 that is in control of the taxpayer;

82 (C) An individual, corporation, partnership, affiliate,  
83 association or trust or any combination or group thereof  
84 controlled by an individual, corporation, partnership,  
85 affiliate, association or trust or any combination or  
86 group thereof that is in control of the taxpayer; or

87 (D) A member of the same controlled group as the  
88 taxpayer.

89 For purposes of this article, "control", with respect to  
90 a corporation, means ownership, directly or indirectly,  
91 of stock possessing fifty percent or more of the total  
92 combined voting power of all classes of the stock of the  
93 corporation which entitles its owner to vote. "Control",  
94 with respect to a trust, means ownership, directly or  
95 indirectly, of fifty percent or more of the beneficial  
96 interest in the principal or income of the trust. The

97 ownership of stock in a corporation, of a capital or  
98 profits interest in a partnership or association or of a  
99 beneficial interest in a trust shall be determined in  
100 accordance with the rules for constructive ownership of  
101 stock provided in Section 267(c) of the United States  
102 Internal Revenue Code, as amended: *Provided*, That  
103 paragraph (3), Section 267(c) of the United States  
104 Internal Revenue Code shall not apply.

105 (12) "Tax year" or "taxable year" means the tax year  
106 of the taxpayer for federal income tax purposes.

107 (13) "Taxpayer" means any person subject to the tax  
108 imposed under article twenty-three or twenty-four of  
109 this chapter, or both.

110 (14) "Unitary business" means a unitary business as  
111 defined in section three-a, article twenty-four of this  
112 chapter.

**§11-13Y-3. Eligibility for tax credits; creation of the credit.**

1 There shall be allowed to every eligible taxpayer a  
2 credit against the taxes imposed under articles twenty-  
3 three and twenty-four of this chapter, as determined  
4 under this article.

**§11-13Y-4. Amount of credit allowed.**

1 (a) *Credit allowed.* — Eligible taxpayers shall be  
2 allowed a credit against the tax imposed under article  
3 twenty-three or twenty-four of this chapter, the  
4 application of which and the amount of which shall be  
5 determined as provided in this article.

6       (b) *Amount of credit.* — The amount of credit allowed  
7 to the eligible taxpayer is the amount of West Virginia  
8 *ad valorem* property tax paid on the value of  
9 manufacturing inventory of the eligible taxpayer during  
10 the corporate net income tax year and business  
11 franchise tax year.

**§11-13Y-5. Application of annual credit allowance.**

1       (a) *Application of credit against business franchise*  
2 *tax.* —The amount of credit allowed shall first be taken  
3 against the tax liabilities of the eligible taxpayer for the  
4 current taxable year imposed by article twenty-three of  
5 this chapter.

6       (b) *Application of credit against corporate net income*  
7 *tax.* —Any credit remaining after application of the  
8 credit against the tax liabilities of the eligible taxpayer  
9 for the current taxable year imposed by article twenty-  
10 three of this chapter shall next be taken against the tax  
11 liabilities of the eligible taxpayer for the current  
12 taxable year imposed by article twenty-four of this  
13 chapter.

14       (c) *Carryover credit disallowed.* — Any credit  
15 remaining after application of the credit against the tax  
16 liabilities specified in subsections (a) and (b) of this  
17 section for the current taxable year is forfeited and shall  
18 not carry back to any prior taxable year and shall not  
19 carry forward to any subsequent taxable year. The  
20 credit allowed under this article shall be applied after  
21 application of all other applicable tax credits allowed  
22 for the taxable year against the taxes imposed by article  
23 twenty-three of this chapter and after application of all  
24 other applicable tax credits allowed for the taxable year

25 against the taxes imposed by article twenty-four of this  
26 chapter.

27 (d) *Annual schedule.* — For purposes of asserting the  
28 credit against tax, the taxpayer shall prepare and file an  
29 annual schedule showing the amount of tax paid for the  
30 taxable year and the amount of credit allowed under  
31 this article. The annual schedule shall set forth the  
32 information and be in the form prescribed by the Tax  
33 Commissioner.

**§11-13Y-6. Availability of credit to successors.**

1 (a) *Transfer or sale of assets.* —

2 (1) Where there has been a transfer or sale of the  
3 business assets of an eligible taxpayer to a successor  
4 which subsequent to the transfer constitutes an eligible  
5 taxpayer as defined in this article, which continues to  
6 operate the manufacturing business in this state, and  
7 which remains subject to the taxes prescribed under  
8 article twenty-three or twenty-four of this chapter, or  
9 both, the successor eligible taxpayer is entitled to the  
10 credit allowed under this article: *Provided*, That the  
11 successor taxpayer otherwise remains in compliance  
12 with the requirements of this article for entitlement to  
13 the credit.

14 (2) For any taxable year during which a transfer, or  
15 sale of the business assets of an eligible taxpayer to a  
16 successor eligible taxpayer under this section occurs, or  
17 a merger occurs pursuant to which credit is allowed  
18 under this article, the credit allowed under this article  
19 shall be apportioned between the predecessor eligible  
20 taxpayer and the successor eligible taxpayer based on

21 the number of days during the taxable year that each  
22 taxpayer based and the number of days during the  
23 taxable year that each taxpayer owned the business  
24 assets transferred.

25 (b) *Stock purchases.* — Where a corporation which is  
26 an eligible taxpayer entitled to the credit allowed under  
27 this article is purchased through a stock purchase by a  
28 new owner and remains a legal entity so as to retain its  
29 corporate identity, the entitlement of that corporation  
30 to the credit allowed under this article will not be  
31 affected by the ownership change: *Provided*, That the  
32 corporation otherwise remains in compliance with the  
33 requirements of this article for entitlement to the credit.

34 (c) *Mergers.* —

35 (1) Where a corporation or other entity which is an  
36 eligible taxpayer entitled to the credit allowed under  
37 this article is merged with another corporation or entity,  
38 the surviving corporation or entity shall be entitled to  
39 the credit to which the predecessor eligible taxpayer  
40 was originally entitled: *Provided*, That the surviving  
41 corporation or entity otherwise complies with the  
42 provisions of this article.

43 (2) The amount of credit available in any taxable year  
44 during which a merger occurs shall be apportioned  
45 between the predecessor eligible taxpayer and the  
46 successor eligible taxpayer based on the number of days  
47 during the taxable year that each owned the transferred  
48 business assets.

49 (d) No provision of this section or of this article shall  
50 be construed to allow sales or other transfers of the tax

51 credit allowed under this article. The credit allowed  
52 under this article can be transferred only in  
53 circumstances where there is a valid successorship as  
54 described under this section.

**§11-13Y-7. Credit recapture; interest; penalties; additions to  
tax; statute of limitations.**

1 (a) If it appears upon audit or otherwise that any  
2 person or entity has taken the credit against tax allowed  
3 under this article and was not entitled to take the credit,  
4 then the credit improperly taken under this article shall  
5 be recaptured. Amended returns shall be filed for any  
6 tax year for which the credit was improperly taken.  
7 Any additional taxes due under this chapter shall be  
8 remitted with the amended return or returns filed with  
9 the Tax Commissioner, along with interest, as provided  
10 in section seventeen, article ten of this chapter and such  
11 other penalties and additions to tax as may be  
12 applicable pursuant to the provisions of article ten of  
13 this chapter.

14 (b) Notwithstanding the provisions of article ten of  
15 this chapter, penalties and additions to tax imposed  
16 under article ten of this chapter may be waived at the  
17 discretion of the Tax Commissioner: *Provided*, That  
18 interest is not subject to waiver.

19 (c) Notwithstanding the provisions of article ten of  
20 this chapter, the statute of limitations for the issuance  
21 of an assessment of tax by the Tax Commissioner shall  
22 be five years from the date of filing of any tax return on  
23 which this credit was taken or five years from the date  
24 of payment of any tax liability calculated pursuant to  
25 the assertion of the credit allowed under this article,

26 whichever is later.

**§11-13Y-8. Report on credit.**

1 (a) The Tax Commissioner shall provide to the Joint  
2 Committee on Government and Finance by the first day  
3 of July, two thousand eleven, and on the first day of  
4 July of each year thereafter, a report detailing the  
5 amount of credit claimed pursuant to this article. The  
6 report is to include the amount of credit claimed against  
7 the business franchise tax and the amount of credit  
8 claimed against the corporate net income tax.

9 (b) Taxpayers claiming the credit shall provide the  
10 information as the Tax Commissioner may require to  
11 prepare the report: *Provided*, That the information is  
12 subject to the confidentiality and disclosure provisions  
13 of sections five-d and five-s, article ten of this chapter.

**§11-13Y-9. Effective date.**

1 This article shall be effective for corporate net income  
2 tax years and business franchise tax years beginning on  
3 or after the first day of January, two thousand nine.

**ARTICLE 23. BUSINESS FRANCHISE TAX.**

**§11-23-5a. Special apportionment rules - financial organizations.**

1 (a) *General.* — The Legislature hereby finds that the  
2 general formula set forth in section five of this article  
3 for apportioning the tax base of corporations and  
4 partnerships taxable in this state as well as in another  
5 state is inappropriate for use by financial organizations  
6 due to the particular characteristics of those

7 organizations and the manner in which their business is  
8 conducted. Accordingly, the general formula set forth  
9 in section five of this article may not be used to  
10 apportion the tax base of financial organizations which  
11 shall use only the apportionment formula and methods  
12 set forth in this section.

13 (b) *West Virginia financial organizations taxable in*  
14 *another state.* — A financial organization that has its  
15 commercial domicile in this state and which is taxable  
16 in another state may not apportion its tax base as  
17 provided in section five of this article, but shall  
18 apportion its tax base to this state by multiplying it by  
19 the special gross receipts factor calculated as provided  
20 in subsection (f) of this section. The product of this  
21 multiplication is the portion of its tax base that is  
22 attributable to business activity in this state.

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

32 (d) *Engaging in business — nexus presumptions and*  
33 *exclusions.* — A financial organization that has its  
34 commercial domicile in another state is presumed to be  
35 regularly engaging in business in this state if during any  
36 year it obtains or solicits business with twenty or more  
37 persons within this state, or if the sum of the value of its  
38 gross receipts attributable to sources in this state equals

39 or exceeds one hundred thousand dollars. However,  
40 gross receipts from the following types of property, as  
41 well as those contacts with this state reasonably and  
42 exclusively required to evaluate and complete the  
43 acquisition or disposition of the property, the servicing  
44 of the property or the income from it, the collection of  
45 income from the property or the acquisition or  
46 liquidation of collateral relating to the property shall  
47 not be a factor in determining whether the owner is  
48 engaging in business in this state:

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

52 (2) An interest in a loan backed security representing  
53 ownership or participation in a pool of promissory notes  
54 or certificates of interest that provide for payments in  
55 relation to payments or reasonable projections of  
56 payments on the notes or certificates;

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

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

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

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

72 (1) “Commercial domicile” means the same as that  
73 term is defined in section three of this article.

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

97 (B) Trust funds received or held by a financial  
98 organization, whether held in the trust department or  
99 held or deposited in any other department of the

100 financial organization;

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

121 (D) Outstanding drafts, including advice or  
122 authorization to charge a financial organization's  
123 balance in another organization, cashier's checks,  
124 money orders or other officer's checks issued in the  
125 usual course of business for any purpose, but not  
126 including those issued in payment for services,  
127 dividends or purchases or other costs or expenses of the  
128 financial organization itself; and

129 (E) Money or its equivalent held as a credit balance by  
130 a financial organization on behalf of its customer if the  
131 entity is engaged in soliciting and holding balances in

132 the regular course of its business.

133 (3) "Financial organization" means a financial  
134 organization as defined in subdivision (13), subsection  
135 (b), section three of this article, as well as a partnership  
136 which derives more than fifty percent of its gross  
137 business income from one or more of the activities  
138 enumerated in subparagraphs (1) through (6), inclusive,  
139 paragraph (C) of said subdivision.

140 (4) "Sales" means: For purposes of apportionment  
141 under this section, the gross receipts of a financial  
142 organization included in the gross receipts factor  
143 described in subsection (f) of this section, regardless of  
144 their source.

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

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

160 (A) Gross receipts from the lease or rental of real or  
161 tangible personal property, whether as the economic

162 equivalent of an extension of credit or otherwise if the  
163 property is located in this state;

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

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

181 (D) Interest income and other receipts from  
182 commercial loans and installment obligations which are  
183 unsecured or are secured by intangible property if and  
184 to the extent that the borrower or debtor is a resident of  
185 or is domiciled in this state: *Provided*, That receipts are  
186 presumed to be from sources in this state and the  
187 presumption may be overcome by reference to factors  
188 described in rules to be promulgated by the Tax  
189 Commissioner, including the factor that the proceeds of  
190 any loans were applied and used by the borrower  
191 entirely outside of this state;

192 (E) Interest income and other receipts from a financial

193 organization's syndication and participation in loans,  
194 under the rules set forth in paragraphs (A) through (D),  
195 inclusive, of this subdivision;

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

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

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

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

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

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

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

242 (v) The service receipt is associated with the  
243 performance of any other service not identified above  
244 and the service is performed for an individual resident  
245 of, or for a corporation or other business domiciled in,  
246 this state and the economic benefit of service is received  
247 in this state;

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

251 (J) All other receipts not attributed by this rule to a  
252 state in which the taxpayer is taxable shall be  
253 attributed pursuant to the laws of the state of the

254 taxpayer's commercial domicile.

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

259 (g) *Limited tax credit for certain financial*  
260 *organizations for certain periods*. — A credit shall be  
261 allowed against the tax imposed by this article on a  
262 financial organization with its commercial domicile in  
263 this state that acquires a financial organization that  
264 does not have its commercial domicile in this state:  
265 *Provided*, That the goodwill associated with the  
266 acquisition is first added to the net equity of the  
267 financial organization with its commercial domicile in  
268 this state on or after the first day of January two  
269 thousand eight: *Provided, however*, That the prior  
270 recordation of the goodwill associated with the  
271 acquisition on the balance sheet of a financial  
272 organization that does not have its commercial domicile  
273 in this state shall not affect, limit or reduce the  
274 availability of the credit authorized by this subsection.  
275 The credit shall equal fifty percent of the goodwill  
276 associated with the acquisition in the amount first  
277 recorded on the balance sheet of the financial  
278 organization with its commercial domicile in this state,  
279 multiplied by the tax rate applicable to the financial  
280 organization under this article for the taxable year. For  
281 purposes of this subsection, the term "goodwill" shall  
282 have the meaning set forth in the capital adequacy  
283 guidelines for bank holding companies established by  
284 the Federal Reserve Board in 12 C. F. R. 225, Appendix  
285 A, as the same may be revised from time to time.

286 (h) *Effective date.* — The provisions of this section  
287 enacted in chapter one hundred sixty-seven, Acts of the  
288 Legislature, one thousand nine hundred ninety-one,  
289 shall apply to all taxable years beginning on or after the  
290 first day of January, one thousand nine hundred ninety-  
291 one. The amendments to this section, enacted in the  
292 year one thousand nine hundred ninety-six, shall apply  
293 to taxable years beginning after the thirty-first day of  
294 December, one thousand nine hundred ninety-five. The  
295 amendments to this section, enacted in the year two  
296 thousand eight, shall apply to taxable years beginning  
297 after the thirty-first day of December, two thousand  
298 eight: *Provided*, That the amendments to subsection (g)  
299 of this section, enacted in the year two thousand eight,  
300 shall apply to taxable years beginning after the thirty-  
301 first day of December, two thousand seven.

**§11-23-6. Imposition of tax; change in rate of tax.**

1 (a) *General.* — An annual business franchise tax is  
2 hereby imposed on the privilege of doing business in  
3 this state and in respect of the benefits and protection  
4 conferred. Such tax shall be collected from every  
5 domestic corporation, every corporation having its  
6 commercial domicile in this state, every foreign or  
7 domestic corporation owning or leasing real or tangible  
8 personal property located in this state or doing business  
9 in this state and from every partnership owning or  
10 leasing real or tangible personal property located in this  
11 state or doing business in this state effective on and  
12 after the first day of July, one thousand nine hundred  
13 eighty-seven.

14 (b) *Amount of tax and rate; effective date.* —

15 (1) On and after the first day of July, one thousand  
16 nine hundred eighty-seven, the amount of tax shall be  
17 the greater of fifty dollars or fifty-five one hundredths  
18 of one percent of the value of the tax base, as  
19 determined under this article: *Provided*, That when the  
20 taxpayer's first taxable year under this article is a short  
21 taxable year, the taxpayer's liability shall be prorated  
22 based upon the ratio which the number of months in  
23 which such short taxable year bears to twelve:  
24 *Provided, however*, That this subdivision shall not apply  
25 to taxable years beginning on or after the first day of  
26 January, one thousand nine hundred eighty-nine.

27 (2) *Taxable years after the thirty-first day of*  
28 *December, one thousand nine hundred eighty-eight.* —  
29 For taxable years beginning on or after the first day of  
30 January, one thousand nine hundred eighty-nine, the  
31 amount of tax due under this article shall be the greater  
32 of fifty dollars or seventy-five one hundredths of one  
33 percent of the value of the tax base as determined under  
34 this article.

35 (3) *Taxable years after the thirtieth day of June, one*  
36 *thousand nine hundred ninety-seven.* — For taxable  
37 years beginning on or after the first day of July, one  
38 thousand nine hundred ninety-seven, the amount of tax  
39 due under this article shall be the greater of fifty dollars  
40 or seventy hundredths of one percent of the value of the  
41 tax base as determined under this article.

42 (4) *Taxable years after the thirty-first day of*  
43 *December, two thousand six.* — For taxable years  
44 beginning on or after the first day of January, two  
45 thousand seven, the amount of tax due under this article  
46 shall be the greater of fifty dollars or fifty-five one

47 hundredths of one percent of the value of the tax base as  
48 determined under this article.

49 (5) *Taxable years after the thirty-first day of*  
50 *December, two thousand eight.* — For taxable years  
51 beginning on or after the first day of January, two  
52 thousand nine, the amount of tax due under this article  
53 shall be the greater of fifty dollars or forty-eight one  
54 hundredths of one percent of the value of the tax base as  
55 determined under this article.

56 (6) *Taxable years after the thirty-first day of*  
57 *December, two thousand nine.* — For taxable years  
58 beginning on or after the first day of January, two  
59 thousand ten, the amount of tax due under this article  
60 shall be the greater of fifty dollars or forty-one one  
61 hundredths of one percent of the value of the tax base as  
62 determined under this article.

63 (7) *Taxable years after the thirty-first day of*  
64 *December, two thousand ten.* — For taxable years  
65 beginning on or after the first day of January, two  
66 thousand eleven, the amount of tax due under this  
67 article shall be the greater of fifty dollars or thirty-four  
68 one hundredths of one percent of the value of the tax  
69 base as determined under this article.

70 (8) *Taxable years after the thirty-first day of*  
71 *December, two thousand eleven.* — For taxable years  
72 beginning on or after the first day of January, two  
73 thousand twelve, the amount of tax due under this  
74 article shall be the greater of fifty dollars or  
75 twenty-seven one hundredths of one percent of the  
76 value of the tax base as determined under this article.

77       (9) *Taxable years after the thirty-first day of*  
78 *December, two thousand twelve.* — For taxable years  
79 beginning on or after the first day of January, two  
80 thousand thirteen, the amount of tax due under this  
81 article shall be the greater of fifty dollars or twenty one  
82 hundredths of one percent of the value of the tax base as  
83 determined under this article.

84       (10) *Taxable years after the thirty-first day of*  
85 *December, two thousand thirteen.* — For taxable years  
86 beginning on or after the first day of January, two  
87 thousand fourteen, the amount of tax due under this  
88 article shall be the greater of fifty dollars or ten one  
89 hundredths of one percent of the value of the tax base as  
90 determined under this article.

91       (11) *Taxable years after the thirty-first day of*  
92 *December, two thousand fourteen.* — For taxable years  
93 beginning on or after the first day of January, two  
94 thousand fifteen, there shall be no tax due under the  
95 provisions of this article.

96       (c) *Short taxable years.* — When the taxpayer's  
97 taxable year for federal income tax purposes is a short  
98 taxable year, the tax determined by application of the  
99 tax rate to the taxpayer's tax base shall be prorated  
100 based upon the ratio which the number of months in  
101 such short taxable year bears to twelve: *Provided,* That  
102 when the taxpayer's first taxable year under this article  
103 is less than twelve months, the taxpayer's liability shall  
104 be prorated based upon the ratio which the number of  
105 months the taxpayer was doing business in this state  
106 bears to twelve, but in no event shall the tax due be less  
107 than fifty dollars.

**§11-23-17b. Application of tax credits.**

1     Except where otherwise provided, no tax credit  
2     earned by one member of the combined group, but not  
3     fully used by or allowed to that member, may be used,  
4     in whole or in part, by another member of the group or  
5     applied, in whole or in part, against the tax of another  
6     member of the combined group; and a tax credit carried  
7     over into a subsequent year as to the member that  
8     incurred it, and available as a credit to that member in  
9     a subsequent year, will be considered in the  
10    computation of the capital of that member in the  
11    subsequent year regardless of the composition of that  
12    capital as apportioned, allocated or wholly within this  
13    state: *Provided*, That unused and unexpired economic  
14    development tax credits that were earned during a tax  
15    year in which the taxpayer filed a consolidated return  
16    under this article may, if otherwise allowed within the  
17    statutory limitations applicable to the tax credit, be  
18    used, in whole or in part, or applied, in whole or in part,  
19    against the taxes imposed by this article on any member  
20    of the taxpayer's combined group to the extent the  
21    credits would have been allowed had the taxpayer  
22    continued to file a consolidated return. For purposes of  
23    this section the term economic development tax credit  
24    means and is limited to a tax credit asserted on a tax  
25    return under article thirteen-c, thirteen-d, thirteen-e,  
26    thirteen-f, thirteen-g, thirteen-j, thirteen-q, thirteen-r  
27    or thirteen-s of this chapter or under article one,  
28    chapter five-e of this code.

**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  
4 the regular course of the taxpayer’s trade or business  
5 and includes income from tangible and intangible  
6 property if the acquisition, management and disposition  
7 of the property or the rendering of services in  
8 connection therewith constitute integral parts of the  
9 taxpayer’s regular trade or business operations and  
10 includes all income which is apportionable under the  
11 Constitution of the United States.

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

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

25       (4) *Compensation.* — The term “compensation” means  
26 wages, salaries, commissions and any other form of  
27 remuneration paid to employees for personal services.

28       (5) *Corporation.* — “Corporation” means any  
29 corporation as defined by the laws of this state or  
30 organization of any kind treated as a corporation for tax  
31 purposes under the laws of this state, wherever located,  
32 which if it were doing business in this state would be

33 subject to the tax imposed by this article. The business  
34 conducted by a partnership which is directly or  
35 indirectly held by a corporation shall be considered the  
36 business of the corporation to the extent of the  
37 corporation's distributive share of the partnership  
38 income, inclusive of guaranteed payments to the extent  
39 prescribed by regulation. The term "corporation"  
40 includes a joint-stock company and any association or  
41 other organization which is taxable as a corporation  
42 under the federal income tax law.

43 (6) *Delegate*. — The term "delegate" in the phrase "or  
44 his or her delegate", when used in reference to the Tax  
45 Commissioner, means any officer or employee of the  
46 State Tax Department duly authorized by the Tax  
47 Commissioner directly, or indirectly by one or more  
48 redelegations of authority, to perform the functions  
49 mentioned or described in this article or regulations  
50 promulgated thereunder.

51 (7) *Domestic corporation*. — The term "domestic  
52 corporation" means any corporation organized under  
53 the laws of West Virginia and certain corporations  
54 organized under the laws of the State of Virginia before  
55 the twentieth day of June, one thousand eight hundred  
56 sixty-three. Every other corporation is a foreign  
57 corporation.

58 (8) *Engaging in business*. — The term "engaging in  
59 business" or "doing business" means any activity of a  
60 corporation which enjoys the benefits and protection of  
61 government and laws in this state.

62 (9) *Federal Form 1120*. — The term "Federal Form  
63 1120" means the annual federal income tax return of

64 any corporation made pursuant to the United States  
65 Internal Revenue Code of 1986, as amended, or in  
66 successor provisions of the laws of the United States, in  
67 respect to the federal taxable income of a corporation,  
68 and filed with the federal Internal Revenue Service. In  
69 the case of a corporation that elects to file a federal  
70 income tax return as part of an affiliated group, but  
71 files as a separate corporation under this article, then as  
72 to such corporation Federal Form 1120 means its pro  
73 forma Federal Form 1120.

74 (10) *Fiduciary*. — The term “fiduciary” means, and  
75 includes, a guardian, trustee, executor, administrator,  
76 receiver, conservator or any person acting in any  
77 fiduciary capacity for any person.

78 (11) *Financial organization*. — The term “financial  
79 organization” means:

80 (A) A holding company or a subsidiary thereof. As  
81 used in this section “holding company” means a  
82 corporation registered under the federal Bank Holding  
83 Company Act of 1956 or registered as a savings and loan  
84 holding company other than a diversified savings and  
85 loan holding company as defined in Section 408(a)(1)(F)  
86 of the federal National Housing Act, 12 U. S.  
87 C. §1730(a)(1)(F);

88 (B) A regulated financial corporation or a subsidiary  
89 thereof. As used in this section “regulated financial  
90 corporation” means:

91 (i) An institution, the deposits, shares or accounts of  
92 which are insured under the Federal Deposit Insurance  
93 Act or by the federal Savings and Loan Insurance

94 Corporation;

95 (ii) An institution that is a member of a federal home  
96 loan bank;

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

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

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

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

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

108 (C) A corporation which derives more than fifty  
109 percent of its gross business income from one or more of  
110 the following activities:

111 (i) Making, acquiring, selling or servicing loans or  
112 extensions of credit. Loans and extensions of credit  
113 include:

114 (I) Secured or unsecured consumer loans;

115 (II) Installment obligations;

116 (III) Mortgages or other loans secured by real estate or  
117 tangible personal property;

118 (IV) Credit card loans;

119 (V) Secured and unsecured commercial loans of any  
120 type; and

121 (VI) Loans arising in factoring.

122 (ii) Leasing or acting as an agent, broker or advisor in  
123 connection with leasing real and personal property that  
124 is the economic equivalent of an extension of credit as  
125 defined by the Federal Reserve Board in 12 CFR  
126 225.25(b)(5).

127 (iii) Operating a credit card business.

128 (iv) Rendering estate or trust services.

129 (v) Receiving, maintaining or otherwise handling  
130 deposits.

131 (vi) Engaging in any other activity with an economic  
132 effect comparable to those activities described in  
133 subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph.

134 (12) *Fiscal year*. — The term “fiscal year” means an  
135 accounting period of twelve months ending on any day  
136 other than the last day of December and on the basis of  
137 which the taxpayer is required to report for federal  
138 income tax purposes.

139 (13) *Includes and including*. — The terms “includes”  
140 and “including”, when used in a definition contained in  
141 this article, do not exclude other things otherwise  
142 within the meaning of the term being defined.

143       (14) *Insurance company*. — The term “insurance  
144 company” means any corporation subject to taxation  
145 under section twenty-two, article three, chapter twenty-  
146 nine of this code or chapter thirty-three of this code or  
147 an insurance carrier subject to the surcharge imposed  
148 by subdivision (1) or (3), subsection (f), section three,  
149 article two-c, chapter twenty-three of this code or any  
150 corporation that would be subject to taxation under any  
151 of those provisions were its business transacted in this  
152 state.

153       (15) “Internal Revenue Code” means the Internal  
154 Revenue Code as defined in section three of this article,  
155 without regard to application of federal treaties unless  
156 expressly made applicable to states of the United States.

157       (16) *Nonbusiness income*. — The term “nonbusiness  
158 income” means all income other than business income.

159       (17) “Partnership” means a general or limited  
160 partnership or organization of any kind treated as a  
161 partnership for tax purposes under the laws of this  
162 state.

163       (18) *Person*. — The term “person” is considered  
164 interchangeable with the term “corporation” in this  
165 section. The term “person” means any individual, firm,  
166 partnership, general partner of a partnership, limited  
167 liability company, registered limited liability  
168 partnership, foreign limited liability partnership,  
169 association, corporation whether or not the corporation  
170 is, or would be if doing business in this state, subject to  
171 the tax imposed by this article, company, syndicate,  
172 estate, trust, business trust, trustee, trustee in  
173 bankruptcy, receiver, executor, administrator, assignee

174 or organization of any kind.

175 (19) *Pro forma return*. — The term “pro forma return”  
176 when used in this article means the return which the  
177 taxpayer would have filed with the Internal Revenue  
178 Service had it not elected to file federally as part of an  
179 affiliated group.

180 (20) *Public utility*. — The term “public utility” means  
181 any business activity to which the jurisdiction of the  
182 Public Service Commission of West Virginia extends  
183 under section one, article two, chapter twenty-four of  
184 this code.

185 (21) *Sales*. — The term “sales” means all gross  
186 receipts of the taxpayer that are “business income” as  
187 defined in this section.

188 (22) *State*. — The term “state” means any state of the  
189 United States, the District of Columbia, the  
190 Commonwealth of Puerto Rico, any territory or  
191 possession of the United States and any foreign country  
192 or political subdivision thereof.

193 (23) *Taxable year, tax year*. — The term “taxable  
194 year” or “tax year” means the taxable year for which  
195 the taxable income of the taxpayer is computed under  
196 the federal income tax law.

197 (24) *Tax*. — The term “tax” includes, within its  
198 meaning, interest and additions to tax, unless the  
199 intention to give it a more limited meaning is disclosed  
200 by the context.

201 (25) *Tax Commissioner*. — The term “Tax

202 Commissioner” means the Tax Commissioner of the  
203 State of West Virginia or his or her delegate.

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

236 to governmental authority.

237 (27) *Taxpayer*. — The term “taxpayer” means any  
238 person subject to the tax imposed by this article.

239 (28) *This code*. — The term “this code” means the  
240 Code of West Virginia, one thousand nine hundred  
241 thirty-one, as amended.

242 (29) *This state*. — The term “this state” means the  
243 State of West Virginia.

244 (30) “United States” means the United States of  
245 America and includes all of the states of the United  
246 States, the District of Columbia and United States  
247 territories and possessions.

248 (31) “Unitary business” means a single economic  
249 enterprise that is made up either of separate parts of a  
250 single business entity or of a commonly controlled group  
251 of business entities that are sufficiently interdependent,  
252 integrated and interrelated through their activities so as  
253 to provide a synergy and mutual benefit that produces  
254 a sharing or exchange of value among them and a  
255 significant flow of value to the separate parts. For  
256 purposes of this article and article twenty-three of this  
257 chapter, any business conducted by a partnership shall  
258 be treated as conducted by its partners, whether directly  
259 held or indirectly held through a series of partnerships,  
260 to the extent of the partner’s distributive share of the  
261 partnership’s income, regardless of the percentage of the  
262 partner’s ownership interest or the percentage of its  
263 distributive or any other share of partnership income.  
264 A business conducted directly or indirectly by one  
265 corporation through its direct or indirect interest in a

266 partnership is unitary with that portion of a business  
267 conducted by one or more other corporations through  
268 their direct or indirect interest in a partnership if there  
269 is a synergy and mutual benefit that produces a sharing  
270 or exchange of value among them and a significant flow  
271 of value to the separate parts and the corporations are  
272 members of the same commonly controlled group.

273 (32) *West Virginia taxable income*. — The term “West  
274 Virginia taxable income” means the taxable income of  
275 a corporation as defined by the laws of the United  
276 States for federal income tax purposes, adjusted, as  
277 provided in this article: *Provided*, That in the case of a  
278 corporation having income from business activity which  
279 is taxable without this state, its “West Virginia taxable  
280 income” shall be the portion of its taxable income as  
281 defined and adjusted as is allocated or apportioned to  
282 this state under the provisions of this article.

**§11-24-3b. General meaning of definition of the term tax  
haven for specified jurisdictions.**

1 (a) *General*. — For purposes of this article and article  
2 twenty-three of this chapter, a jurisdiction that, for a  
3 particular tax year in question is identified by the  
4 Organization for Economic Cooperation and  
5 Development as a tax haven or as having a harmful  
6 preferential tax regime means and includes any and all  
7 jurisdictions so identified as of the most recent list or  
8 compilation of jurisdictions issued, published or  
9 adopted by the Organization for Economic Cooperation  
10 and Development on or before the effective date of this  
11 section.

12 (b) *Effective date*. — This section as enacted in the

13 year two thousand eight shall be effective on passage.

**§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.**

1     *Primary tax.* — (1) In the case of taxable periods  
2 beginning after the thirtieth day of June, one thousand  
3 nine hundred sixty-seven, and ending prior to the first  
4 day of January, one thousand nine hundred eighty-  
5 three, a tax is hereby imposed for each taxable year at  
6 the rate of six percent per annum on the West Virginia  
7 taxable income of every domestic or foreign corporation  
8 engaging in business in this state or deriving income  
9 from property, activity or other sources in this state,  
10 except corporations exempt under section five.

11     (2) In the case of taxable periods beginning on or after  
12 the first day of January, one thousand nine hundred  
13 eighty-three, and ending prior to the first day of July,  
14 one thousand nine hundred eighty-seven, a tax is hereby  
15 imposed for each taxable year on the West Virginia  
16 taxable income of every domestic or foreign corporation  
17 engaging in business in this state or deriving income  
18 from property, activity or other sources in this state,  
19 except corporations exempt under section five of this  
20 article, and any banks, banking associations or  
21 corporations, trust companies, building and loan  
22 associations and savings and loan associations, at the  
23 rates which follow:

24     (A) On taxable income not in excess of fifty thousand  
25 dollars, the rate of six percent; and

26     (B) On taxable income in excess of fifty thousand  
27 dollars, the rate of seven percent.

28       (3) In the case of taxable periods beginning on or after  
29 the first day of July, one thousand nine hundred eighty-  
30 seven, a tax is hereby imposed for each taxable year on  
31 the West Virginia taxable income of every domestic or  
32 foreign corporation engaging in business in this state or  
33 deriving income from property, activity or other sources  
34 in this state, except corporations exempt under section  
35 five of this article, at the rate of nine and three-quarters  
36 percent. Beginning the first day of July, one thousand  
37 nine hundred eighty-eight, and on each first day of July  
38 thereafter for four successive calendar years, the rate  
39 shall be reduced by fifteen one hundredths of one  
40 percent per year, with such rate to be nine percent on  
41 and after the first day of July, one thousand nine  
42 hundred ninety-two.

43       (4) In the case of taxable periods beginning on or after  
44 the first day of January, two thousand seven, a tax is  
45 hereby imposed for each taxable year on the West  
46 Virginia taxable income of every domestic or foreign  
47 corporation engaging in business in this state or  
48 deriving income from property, activity or other sources  
49 in this state, except corporations exempt under section  
50 five of this article, at the rate of eight and three-  
51 quarters percent.

52       (5) In the case of taxable periods beginning on or after  
53 the first day of January, two thousand nine, a tax is  
54 hereby imposed for each taxable year on the West  
55 Virginia taxable income of every domestic or foreign  
56 corporation engaging in business in this state or  
57 deriving income from property, activity or other sources  
58 in this state, except corporations exempt under section  
59 five of this article, at the rate of eight and one-half  
60 percent.

61 (6) In the case of taxable periods beginning on or after  
62 the first day of January, two thousand twelve, a tax is  
63 hereby imposed for each taxable year on the West  
64 Virginia taxable income of every domestic or foreign  
65 corporation engaging in business in this state or  
66 deriving income from property, activity or other sources  
67 in this state, except corporations exempt under section  
68 five of this article, at the rate of seven and three-  
69 quarters percent: *Provided*, That the reduction in tax  
70 authorized by this subsection shall be suspended if the  
71 combined balance of funds as of the thirtieth day of  
72 June, two thousand eleven, in the Revenue Fund  
73 Shortfall Reserve Fund and the Revenue Fund Shortfall  
74 Reserve Fund - Part B established in section twenty,  
75 article two, chapter eleven-b of this code does not equal  
76 or exceed ten percent of the general revenue fund  
77 budgeted for the fiscal year commencing the first day of  
78 July, two thousand eleven: *Provided, however*, That the  
79 rate reduction schedule will resume in the calendar year  
80 immediately following any subsequent fiscal year when  
81 the combined balance of funds as of the thirtieth day of  
82 June of that fiscal year in the Revenue Fund Shortfall  
83 Reserve Fund and the Revenue Fund Shortfall Reserve  
84 Fund - Part B next equals or exceeds ten percent of the  
85 general revenue fund budgeted for the immediately  
86 succeeding fiscal year.

87 (7) In the case of taxable periods beginning on or after  
88 the first day of January, two thousand thirteen, a tax is  
89 hereby imposed for each taxable year on the West  
90 Virginia taxable income of every domestic or foreign  
91 corporation engaging in business in this state or  
92 deriving income from property, activity or other sources  
93 in this state, except corporations exempt under section  
94 five of this article, at the rate of seven percent:

95 *Provided*, That the reduction in tax authorized by this  
96 subsection shall be suspended for one calendar year  
97 subsequent to the occurrence of the suspension of the  
98 reduction in tax authorized by subdivision (6) of this  
99 section: *Provided, however*, That the reduction in tax on  
100 the first day of any calendar year authorized by this  
101 subsection shall be suspended if the combined balance  
102 of funds as of the thirtieth day of June of the preceding  
103 year in the Revenue Fund Shortfall Reserve Fund and  
104 the Revenue Fund Shortfall Reserve Fund - Part B  
105 established in section twenty, article two, chapter  
106 eleven-b of this code does not equal or exceed ten  
107 percent of the general revenue fund budgeted for the  
108 fiscal year commencing the first day of July of the  
109 preceding year.

110 (8) In the case of taxable periods beginning on or after  
111 the first day of January, two thousand fourteen, a tax is  
112 hereby imposed for each taxable year on the West  
113 Virginia taxable income of every domestic or foreign  
114 corporation engaging in business in this state or  
115 deriving income from property, activity or other sources  
116 in this state, except corporations exempt under section  
117 five of this article, at the rate of six and one-half  
118 percent: *Provided*, That the reduction in tax authorized  
119 by this subsection shall be suspended for one calendar  
120 year subsequent to the occurrence of the suspension of  
121 the reduction in tax authorized by subdivision (7) of this  
122 section: *Provided, however*, That the reduction in tax on  
123 the first day of any calendar year authorized by this  
124 subsection shall be suspended if the combined balance  
125 of funds as of the thirtieth day of June of the preceding  
126 year in the Revenue Fund Shortfall Reserve Fund and  
127 the Revenue Fund Shortfall Reserve Fund - Part B  
128 established in section twenty, article two, chapter

129 eleven-b of this code does not equal or exceed ten  
130 percent of the general revenue fund budgeted for the  
131 fiscal year commencing the first day of July of the  
132 preceding year.

**§11-24-7. Allocation and apportionment.**

1 (a) *General.* — Any taxpayer having income from  
2 business activity which is taxable both in this state and  
3 in another state shall allocate and apportion its net  
4 income as provided in this section. For purposes of this  
5 section, the term “net income” means the taxpayer’s  
6 federal taxable income adjusted as provided in section  
7 six of this article.

8 (b) *“Taxable in another state” defined.* — For  
9 purposes of allocation and apportionment of net income  
10 under this section, a taxpayer is taxable in another state  
11 if:

12 (1) In that state the taxpayer is subject to a net income  
13 tax, a franchise tax measured by net income, a franchise  
14 tax for the privilege of doing business or a corporation  
15 stock tax; or

16 (2) That state has jurisdiction to subject the taxpayer  
17 to a net income tax, regardless of whether, in fact, that  
18 state does or does not subject the taxpayer to the tax.

19 (c) *Business activities entirely within West Virginia.*  
20 — If the business activities of a taxpayer take place  
21 entirely within this state, the entire net income of the  
22 taxpayer is subject to the tax imposed by this article.  
23 The business activities of a taxpayer are considered to  
24 have taken place in their entirety within this state if the

25 taxpayer is not "taxable in another state": *Provided*,  
26 That for tax years beginning before the first day of  
27 January, two thousand nine, the business activities of a  
28 financial organization having its commercial domicile  
29 in this state are considered to take place entirely in this  
30 state, notwithstanding that the organization may be  
31 "taxable in another state": *Provided, however*, That for  
32 tax years beginning on or after the first day of January,  
33 two thousand nine, the income from the business  
34 activities of a financial organization that are taxable in  
35 another state shall be apportioned according to the  
36 applicable provisions of this article.

37 (d) *Business activities partially within and partially*  
38 *without West Virginia; allocation of nonbusiness*  
39 *income.* — If the business activities of a taxpayer take  
40 place partially within and partially without this state  
41 and the taxpayer is also taxable in another state, rents  
42 and royalties from real or tangible personal property,  
43 capital gains, interest, dividends or patent or copyright  
44 royalties, to the extent that they constitute nonbusiness  
45 income of the taxpayer, shall be allocated as provided in  
46 subdivisions (1) through (4), inclusive, of this  
47 subsection: *Provided*, That to the extent the items  
48 constitute business income of the taxpayer, they may  
49 not be so allocated but they shall be apportioned to this  
50 state according to the provisions of subsection (e) of this  
51 section and to the applicable provisions of section  
52 seven-b of this article.

53 (1) *Net rents and royalties.* —

54 (A) Net rents and royalties from real property located  
55 in this state are allocable to this state.

56 (B) Net rents and royalties from tangible personal  
57 property are allocable to this state:

58 (i) If and to the extent that the property is utilized in  
59 this state; or

60 (ii) In their entirety if the taxpayer's commercial  
61 domicile is in this state and the taxpayer is not  
62 organized under the laws of or taxable in the state in  
63 which the property is utilized.

64 (C) The extent of utilization of tangible personal  
65 property in a state is determined by multiplying the  
66 rents and royalties by a fraction, the numerator of  
67 which is the number of days of physical location of the  
68 property in the state during the rental or royalty period  
69 in the taxable year and the denominator of which is the  
70 number of days of physical location of the property  
71 everywhere during all rental or royalty periods in the  
72 taxable year. If the physical location of the property  
73 during the rental or royalty period is unknown or  
74 unascertainable by the taxpayer, tangible personal  
75 property is utilized in the state in which the property  
76 was located at the time the rental or royalty payer  
77 obtained possession.

78 (2) *Capital gains.* —

79 (A) Capital gains and losses from sales of real property  
80 located in this state are allocable to this state.

81 (B) Capital gains and losses from sales of tangible  
82 personal property are allocable to this state if:

83 (i) The property had a situs in this state at the time of

84 the sale; or

85 (ii) The taxpayer's commercial domicile is in this state  
86 and the taxpayer is not taxable in the state in which the  
87 property had a situs.

88 (C) Capital gains and losses from sales of intangible  
89 personal property are allocable to this state if the  
90 taxpayer's commercial domicile is in this state.

91 (D) Gains pursuant to Section 631 (a) and (b) of the  
92 Internal Revenue Code of 1986, as amended, from sales  
93 of natural resources severed in this state shall be  
94 allocated to this state if they are nonbusiness income.

95 (3) Interest and dividends are allocable to this state if  
96 the taxpayer's commercial domicile is in this state. —

97 (4) *Patent and copyright royalties.* —

98 (A) Patent and copyright royalties are allocable to this  
99 state:

100 (i) If and to the extent that the patent or copyright is  
101 utilized by the payer in this state; or

102 (ii) If and to the extent that the patent or copyright is  
103 utilized by the payer in a state in which the taxpayer is  
104 not taxable and the taxpayer's commercial domicile is  
105 in this state.

106 (B) A patent is utilized in a state to the extent that it  
107 is employed in production, fabrication, manufacturing  
108 or other processing in the state or to the extent that a  
109 patented product is produced in the state. If the basis

110 of receipts from patent royalties does not permit  
111 allocation to states or if the accounting procedures do  
112 not reflect states of utilization, the patent is utilized in  
113 the state in which the taxpayer's commercial domicile  
114 is located.

115 (C) A copyright is utilized in a state to the extent that  
116 printing or other publication originates in the state. If  
117 the basis of receipts from copyright royalties does not  
118 permit allocation to states or if the accounting  
119 procedures do not reflect states of utilization, the  
120 copyright is utilized in the state in which the taxpayer's  
121 commercial domicile is located.

122 (5) *Corporate partner's distributive share.* —

123 (A) Persons carrying on business as partners in a  
124 partnership, as defined in Section 761 of the Internal  
125 Revenue Code of 1986, as amended, are liable for  
126 income tax only in their separate or individual  
127 capacities.

128 (B) A corporate partner's distributive share of income,  
129 gain, loss, deduction or credit of a partnership shall be  
130 modified as provided in section six of this article for  
131 each partnership. For taxable years beginning on or  
132 after the thirty-first day of December, one thousand  
133 nine hundred ninety-eight, the distributive share shall  
134 then be allocated and apportioned as provided in this  
135 section using the partnership's property, payroll and  
136 sales factors. The sum of that portion of the distributive  
137 share allocated and apportioned to this state shall then  
138 be treated as distributive share allocated to this state;  
139 and that portion of distributive share allocated or  
140 apportioned outside this state shall be treated as

141 distributive share allocated outside this state, unless the  
142 taxpayer requests or the Tax Commissioner, under  
143 subsection (h) of this section requires that the  
144 distributive share be treated differently.

145 (C) This subdivision shall be null and void and of no  
146 force or effect for tax years beginning on or after the  
147 first day of January, two thousand nine.

148 (e) *Business activities partially within and partially*  
149 *without this state; apportionment of business income.*  
150 — All net income, after deducting those items  
151 specifically allocated under subsection (d) of this  
152 section, shall be apportioned to this state by multiplying  
153 the net income by a fraction, the numerator of which is  
154 the property factor plus the payroll factor plus two  
155 times the sales factor and the denominator of which is  
156 four, reduced by the number of factors, if any, having no  
157 denominator.

158 (1) *Property factor.* — The property factor is a  
159 fraction, the numerator of which is the average value of  
160 the taxpayer's real and tangible personal property  
161 owned or rented and used by it in this state during the  
162 taxable year and the denominator of which is the  
163 average value of all the taxpayer's real and tangible  
164 personal property owned or rented and used by the  
165 taxpayer during the taxable year, which is reported on  
166 Schedule L Federal Form 1120, plus the average value  
167 of all real and tangible personal property leased and  
168 used by the taxpayer during the taxable year.

169 (2) *Value of property.* — Property owned by the  
170 taxpayer shall be valued at its original cost, adjusted by  
171 subsequent capital additions or improvements thereto

172 and partial disposition thereof, by reason of sale,  
173 exchange, abandonment, etc.: *Provided*, That where  
174 records of original cost are unavailable or cannot be  
175 obtained without unreasonable expense, property shall  
176 be valued at original cost as determined under rules of  
177 the Tax Commissioner. Property rented by the taxpayer  
178 from others shall be valued at eight times the annual  
179 rental rate. The term "net annual rental rate" is the  
180 annual rental paid, directly or indirectly, by the  
181 taxpayer, or for its benefit, in money or other  
182 consideration for the use of property and includes:

183 (A) Any amount payable for the use of real or tangible  
184 personal property, or any part of the property, whether  
185 designated as a fixed sum of money or as a percentage  
186 of sales, profits or otherwise.

187 (B) Any amount payable as additional rent or in lieu  
188 of rents, such as interest, taxes, insurance, repairs or  
189 any other items which are required to be paid by the  
190 terms of the lease or other arrangement, not including  
191 amounts paid as service charges, such as utilities,  
192 janitor services, etc. If a payment includes rent and  
193 other charges unsegregated, the amount of rent shall be  
194 determined by consideration of the relative values of the  
195 rent and the other items.

196 (3) *Movable property*. — The value of movable  
197 tangible personal property used both within and  
198 without this state shall be included in the numerator to  
199 the extent of its utilization in this state. The extent of  
200 the utilization shall be determined by multiplying the  
201 original cost of the property by a fraction, the  
202 numerator of which is the number of days of physical  
203 location of the property in this state during the taxable

204 period and the denominator of which is the number of  
205 days of physical location of the property everywhere  
206 during the taxable year. The number of days of physical  
207 location of the property may be determined on a  
208 statistical basis or by other reasonable method  
209 acceptable to the Tax Commissioner.

210 (4) *Leasehold improvements.* — Leasehold  
211 improvements shall, for purposes of the property factor,  
212 be treated as property owned by the taxpayer regardless  
213 of whether the taxpayer is entitled to remove the  
214 improvements or the improvements revert to the lessor  
215 upon expiration of the lease. Leasehold improvements  
216 shall be included in the property factor at their original  
217 cost.

218 (5) *Average value of property.* — The average value of  
219 property shall be determined by averaging the values at  
220 the beginning and ending of the taxable year: *Provided,*  
221 That the Tax Commissioner may require the averaging  
222 of monthly values during the taxable year if substantial  
223 fluctuations in the values of the property exist during  
224 the taxable year, or where property is acquired after the  
225 beginning of the taxable year, or is disposed of, or  
226 whose rental contract ceases, before the end of the  
227 taxable year.

228 (6) *Payroll factor.* — The payroll factor is a fraction,  
229 the numerator of which is the total compensation paid  
230 in this state during the taxable year by the taxpayer for  
231 compensation and the denominator of which is the total  
232 compensation paid by the taxpayer during the taxable  
233 year, as shown on the taxpayer's federal income tax  
234 return as filed with the Internal Revenue Service, as  
235 reflected in the schedule of wages and salaries and that

236 portion of cost of goods sold which reflects  
237 compensation or as shown on a pro forma return.

238 (7) *Compensation*. — The term “compensation” means  
239 wages, salaries, commissions and any other form of  
240 remuneration paid to employees for personal services.  
241 Payments made to an independent contractor or to any  
242 other person not properly classifiable as an employee  
243 shall be excluded. Only amounts paid directly to  
244 employees are included in the payroll factor. Amounts  
245 considered as paid directly to employees include the  
246 value of board, rent, housing, lodging and other benefits  
247 or services furnished to employees by the taxpayer in  
248 return for personal services, provided the amounts  
249 constitute income to the recipient for federal income tax  
250 purposes.

251 (8) *Employee*. — The term “employee” means:

252 (A) Any officer of a corporation; or

253 (B) Any individual who, under the usual common-law  
254 rule applicable in determining the employer-employee  
255 relationship, has the status of an employee.

256 (9) *Compensation*. — Compensation is paid or accrued  
257 in this state if:

258 (A) The employee’s service is performed entirely  
259 within this state; or

260 (B) The employee’s service is performed both within  
261 and without this state, but the service performed  
262 without the state is incidental to the individual’s service  
263 within this state. The word “incidental” means any

264 service which is temporary or transitory in nature or  
265 which is rendered in connection with an isolated  
266 transaction; or

267 (C) Some of the service is performed in this state and:

268 (i) The employee's base of operations or, if there is no  
269 base of operations, the place from which the service is  
270 directed or controlled is in the state; or

271 (ii) The base of operations or the place from which the  
272 service is directed or controlled is not in any state in  
273 which some part of the service is performed, but the  
274 employee's residence is in this state.

275 The term "base of operations" is the place of more or  
276 less permanent nature from which the employee starts  
277 his or her work and to which he or she customarily  
278 returns in order to receive instructions from the  
279 taxpayer or communications from his or her customers  
280 or other persons or to replenish stock or other materials,  
281 repair equipment or perform any other functions  
282 necessary to the exercise of his or her trade or  
283 profession at some other point or points. The term  
284 "place from which the service is directed or controlled"  
285 refers to the place from which the power to direct or  
286 control is exercised by the taxpayer:

287 (10) *Sales factor*. — The sales factor is a fraction, the  
288 numerator of which is the gross receipts of the taxpayer  
289 derived from transactions and activity in the regular  
290 course of its trade or business in this state during the  
291 taxable year (business income), less returns and  
292 allowances. The denominator of the fraction is the total  
293 gross receipts derived by the taxpayer from transactions

294 and activity in the regular course of its trade or business  
295 during the taxable year (business income) and reflected  
296 in its gross income reported and as appearing on the  
297 taxpayer's Federal Form 1120 and consisting of those  
298 certain pertinent portions of the (gross income) elements  
299 set forth: *Provided*, That if either the numerator or the  
300 denominator includes interest or dividends from  
301 obligations of the United States government which are  
302 exempt from taxation by this state, the amount of such  
303 interest and dividends, if any, shall be subtracted from  
304 the numerator or denominator in which it is included.

305 (11) *Allocation of sales of tangible personal property.*  
306 —

307 (A) Sales of tangible personal property are in this state  
308 if:

309 (i) The property is received in this state by the  
310 purchaser, other than the United States government,  
311 regardless of the f.o.b. point or other conditions of the  
312 sale. In the case of delivery by common carrier or other  
313 means of transportation, the place at which the property  
314 is ultimately received after all transportation has been  
315 completed is the place at which the property is received  
316 by the purchaser. Direct delivery in this state, other  
317 than for purposes of transportation, to a person or firm  
318 designated by the purchaser, is delivery to the purchaser  
319 in this state and direct delivery outside this state to a  
320 person or firm designated by the purchaser is not  
321 delivery to the purchaser in this state, regardless of  
322 where title passes or other conditions of sale; or

323 (ii) The property is shipped from an office, store,  
324 warehouse, factory or other place of storage in this state

325 and the purchaser is the United States government.

326 (B) All other sales of tangible personal property  
327 delivered or shipped to a purchaser within a state in  
328 which the taxpayer is not taxed, as defined in  
329 subsection (b) of this section, shall be excluded from the  
330 denominator of the sales factor.

331 (12) *Allocation of other sales.* — Sales, other than  
332 sales of tangible personal property, are in this state if:

333 (A) The income-producing activity is performed in this  
334 state; or

335 (B) The income-producing activity is performed both  
336 in and outside this state and a greater proportion of the  
337 income-producing activity is performed in this state  
338 than in any other state, based on costs of performance;  
339 or

340 (C) The sale constitutes business income to the  
341 taxpayer, or the taxpayer is a financial organization not  
342 having its commercial domicile in this state, and in  
343 either case the sale is a receipt described as attributable  
344 to this state in subsection (b), section seven-b of this  
345 article.

346 (13) *Financial organizations and other taxpayers with*  
347 *business activities partially within and partially without*  
348 *this state.* — Notwithstanding anything contained in  
349 this section to the contrary, in the case of financial  
350 organizations and other taxpayers, not having their  
351 commercial domicile in this state, the rules of this  
352 subsection apply to the apportionment of income from  
353 their business activities except as expressly otherwise

354 provided in subsection (b), section seven-b of this  
355 article.

356 (f) *Income-producing activity.* — The term “income-  
357 producing activity” applies to each separate item of  
358 income and means the transactions and activity directly  
359 engaged in by the taxpayer in the regular course of its  
360 trade or business for the ultimate purpose of obtaining  
361 gain or profit. The activity does not include  
362 transactions and activities performed on behalf of the  
363 taxpayer, such as those conducted on its behalf by an  
364 independent contractor. “Income-producing activity”  
365 includes, but is not limited to, the following:

366 (1) The rendering of personal services by employees  
367 with utilization of tangible and intangible property by  
368 the taxpayer in performing a service;

369 (2) The sale, rental, leasing, licensing or other use of  
370 real property;

371 (3) The sale, rental, leasing, licensing or other use of  
372 tangible personal property; or

373 (4) The sale, licensing or other use of intangible  
374 personal property.

375 The mere holding of intangible personal property is  
376 not, in itself, an income-producing activity: *Provided,*  
377 That the conduct of the business of a financial  
378 organization is an income-producing activity.

379 (g) *Cost of performance.* — The term “cost of  
380 performance” means direct costs determined in a  
381 manner consistent with generally accepted accounting

382 principles and in accordance with accepted conditions  
383 or practices in the trade or business of the taxpayer.

384 (h) *Other methods of allocation and apportionment.*  
385 —

386 (1) *General.* — If the allocation and apportionment  
387 provisions of subsections (d) and (e) of this section do  
388 not fairly represent the extent of the taxpayer's business  
389 activities in this state, the taxpayer may petition for or  
390 the Tax Commissioner may require, in respect to all or  
391 any part of the taxpayer's business activities, if  
392 reasonable:

393 (A) Separate accounting;

394 (B) The exclusion of one or more of the factors;

395 (C) The inclusion of one or more additional factors  
396 which will fairly represent the taxpayer's business  
397 activity in this state; or

398 (D) The employment of any other method to effectuate  
399 an equitable allocation or apportionment of the  
400 taxpayer's income. The petition shall be filed no later  
401 than the due date of the annual return for the taxable  
402 year for which the alternative method is requested,  
403 determined without regard to any extension of time for  
404 filing the return and the petition shall include a  
405 statement of the petitioner's objections and of the  
406 alternative method of allocation or apportionment as it  
407 believes to be proper under the circumstances with  
408 detail and proof as the Tax Commissioner requires.

409 (2) *Alternative method for public utilities.* — If the

410 taxpayer is a public utility and if the allocation and  
411 apportionment provisions of subsections (d) and (e) of  
412 this section do not fairly represent the taxpayer's  
413 business activities in this state, the taxpayer may  
414 petition for, or the Tax Commissioner may require, as  
415 an alternative to the other methods provided in  
416 subdivision (1) of this subsection, the allocation and  
417 apportionment of the taxpayer's net income in  
418 accordance with any system of accounts prescribed by  
419 the Public Service Commission of this state pursuant to  
420 the provisions of section eight, article two, chapter  
421 twenty-four of this code: *Provided*, That the allocation  
422 and apportionment provisions of the system of accounts  
423 fairly represent the extent of the taxpayer's business  
424 activities in this state for the purposes of the tax  
425 imposed by this article.

426 (3) *Burden of proof.* — In any proceeding before the  
427 Tax Commissioner or in any court in which employment  
428 of one of the methods of allocation or apportionment  
429 provided in subdivision (1) or (2) of this subsection is  
430 sought, on the grounds that the allocation and  
431 apportionment provisions of subsections (d) and (e) of  
432 this section do not fairly represent the extent of the  
433 taxpayer's business activities in this state, the burden of  
434 proof is:

435 (A) If the Tax Commissioner seeks employment of one  
436 of the methods, on the Tax Commissioner; or

437 (B) If the taxpayer seeks employment of one of the  
438 other methods, on the taxpayer.

**§11-24-7b. Special apportionment rules - financial organizations.**

1       (a) *General.* — The Legislature hereby finds that the  
2 general formula set forth in section seven of this article  
3 for apportioning the business income of corporations  
4 taxable in this state as well as in another state is  
5 inappropriate for use by financial organizations due to  
6 the particular characteristics of those organizations and  
7 the manner in which their business is conducted.  
8 Accordingly, the general formula set forth in section  
9 seven of this article may not be used to apportion the  
10 business income of financial organizations, which shall  
11 use only the apportionment formula and methods set  
12 forth in this section.

13       (b) *West Virginia financial organizations taxable in*  
14 *another state.* — The West Virginia taxable income of  
15 a financial organization that has its commercial  
16 domicile in this state and which is taxable in another  
17 state shall be the sum of: (1) The nonbusiness income  
18 component of its adjusted federal taxable income for the  
19 taxable year which is allocated to this state as provided  
20 in subsection (d), section seven of this article; plus (2)  
21 the business income component of its adjusted federal  
22 taxable income for the taxable year which is  
23 apportioned to this state as provided in this section.

24       (c) *Out-of-state financial organizations with business*  
25 *activities in this state.* — The West Virginia taxable  
26 income of a financial organization that does not have its  
27 commercial domicile in this state but which regularly  
28 engages in business in this state shall be the sum of: (1)  
29 The nonbusiness income component of its adjusted  
30 federal taxable income for the taxable year which is  
31 allocated to this state as provided in subsection (d),  
32 section seven of this article; plus (2) the business income  
33 component of its adjusted federal taxable income for the

34 taxable year which is apportioned to this state as  
35 provided in this section.

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

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

56 (2) An interest in a loan backed security representing  
57 ownership or participation in a pool of promissory notes  
58 or certificates of interest that provide for payments in  
59 relation to payments or reasonable projections of  
60 payments on the notes or certificates;

61 (3) An interest in a loan or other asset from which the  
62 interest is attributed to a consumer loan, a commercial  
63 loan or a secured commercial loan and in which the  
64 payment obligations were solicited and entered into by

65 a person that is independent, and not acting on behalf,  
66 of the owner;

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

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

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

76 (1) “Commercial domicile” has same meaning as that  
77 term is defined in section three-a of this article.

78 (2) “Deposit” means:

79 (A) The unpaid balance of money or its equivalent  
80 received or held by a financial organization in the usual  
81 course of business and for which it has given or it is  
82 obligated to give credit, either conditionally or  
83 unconditionally, to a commercial, checking, savings,  
84 time or thrift account whether or not advance notice is  
85 required to withdraw the credit funds, or which is  
86 evidenced by a certificate of deposit, thrift certificate,  
87 investment certificate or certificate of indebtedness, or  
88 other similar name, or a check or draft drawn against a  
89 deposit account and certified by the financial  
90 organization, or a letter of credit or a traveler’s check on  
91 which the financial organization is primarily liable:  
92 *Provided,* That without limiting the generality of the  
93 term “money or its equivalent”, any account or

94 instrument must be regarded as evidencing the receipt  
95 of the equivalent of money when credited or issued in  
96 exchange for checks or drafts or for a promissory note  
97 upon which the person obtaining any credit or  
98 instrument is primarily or secondarily liable or for a  
99 charge against a deposit account or in settlement of  
100 checks, drafts or other instruments forwarded to the  
101 bank for collection;

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

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

126 (D) Outstanding drafts, including advice or  
127 authorization to charge a financial organization's  
128 balance in another organization, cashier's checks,  
129 money orders or other officer's checks issued in the  
130 usual course of business for any purpose, but not  
131 including those issued in payment for services,  
132 dividends or purchases or other costs or expenses of the  
133 financial organization itself; and

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

138 (3) "Financial organization" has the same meaning as  
139 that term is defined in section three-a of this article.

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

145 (f) *Apportionment rules.* — A financial organization  
146 which regularly engages in business both within and  
147 without this state shall apportion the business income  
148 component of its federal taxable income, after  
149 adjustment as provided in section six of this article, by  
150 multiplying the amount thereof by the special gross  
151 receipts factor determined as provided in subsection (g)  
152 of this section.

153 (g) *Special gross receipts factor.* — The gross receipts  
154 factor is a fraction, the numerator of which is the total  
155 gross receipts of the taxpayer from sources within this

156 state during the taxable year and the denominator of  
157 which is the total gross receipts of the taxpayer  
158 wherever earned during the taxable year: *Provided*,  
159 That neither the numerator nor the denominator of the  
160 gross receipts factor shall include receipts from  
161 obligations described in paragraphs (A), (B), (C) and (D),  
162 subdivision (1), subsection (f), section six of this article.

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

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

171 (B) Interest income and other receipts from assets in  
172 the nature of loans which are secured primarily by real  
173 estate or tangible personal property if the security  
174 property is located in the state. In the event that the  
175 security property is also located in one or more other  
176 states, receipts shall be presumed to be from sources  
177 within this state, subject to rebuttal based upon factors  
178 described in rules to be proposed by the Tax  
179 Commissioner, including the factor that the proceeds of  
180 any loans were applied and used by the borrower  
181 entirely outside of this state;

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

187 otherwise;

188 (D) Interest income and other receipts from  
189 commercial loans and installment obligations which are  
190 unsecured or are secured by intangible property if and  
191 to the extent that the borrower or debtor is a resident of  
192 or is domiciled in this state: *Provided*, That receipts are  
193 presumed to be from sources in this state and the  
194 presumption may be overcome by reference to factors  
195 described in rules to be proposed by the Tax  
196 Commissioner, including the factor that the proceeds of  
197 any loans were applied and used by the borrower  
198 entirely outside of this state;

199 (E) Interest income and other receipts from a financial  
200 organization's syndication and participation in loans,  
201 under the rules set forth in paragraphs (A) through  
202 (D), inclusive, of this subdivision;

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

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

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

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

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

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

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

249 (v) The service receipt is associated with the  
250 performance of any other service not identified above  
251 and the service is performed for an individual resident  
252 of, or for a corporation or other business domiciled in,  
253 this state and the economic benefit of service is received  
254 in this state;

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

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

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

266 (h) *Effective date.* — The provisions of this section  
267 enacted as chapter one hundred sixty-seven, Acts of the  
268 Legislature, one thousand nine hundred ninety-one,  
269 shall apply to all taxable years beginning on or after the  
270 first day of January, one thousand nine hundred ninety-  
271 one. Amendments to this section enacted in the year  
272 one thousand nine hundred ninety-six shall apply to  
273 taxable years beginning after the thirty-first day of  
274 December, one thousand nine hundred ninety-five. The  
275 amendments to this section, enacted in the year two  
276 thousand eight, shall apply to taxable years beginning  
277 after the thirty-first day of December, two thousand  
278 eight.

**§11-24-9b. Limited tax credits - Financial organizations.**

1 (a) Definitions.

2 For purposes of this section:

3 (1) "Adjusted base year tax liability" means the  
4 taxpayer's corporation net income tax liability under  
5 this article, for the tax year ending immediately on or  
6 before the thirty first day of December, two thousand  
7 eight, before application of any surtax, alternative  
8 minimum tax or credit allowed, authorized or imposed  
9 under this chapter, adjusted by:

10 (A) Adding the base year liabilities, if any, of  
11 affiliates, subsidiaries and related entities that are  
12 included in the taxpayer's current year combined  
13 report, but which were not included in the taxpayer's  
14 base year filing configuration, and

15 (B) Subtracting the base year liabilities, if any, of  
16 affiliates, subsidiaries and related entities that were  
17 included in the taxpayer's base year filing  
18 configuration, but that are not included in the  
19 taxpayer's current year combined report.

20 (2) "Adjusted primary tax liability" means the current  
21 year's liability of the taxpayer under this article before  
22 application of any surtax, alternative minimum tax or  
23 credit allowed, authorized or imposed under this  
24 chapter for the current tax year.

25 (3) "Financial organization" means a financial  
26 organization as defined in section three-a of this article.

27 (b) *Credit authorized.* — A credit shall be allowed  
28 against the adjusted primary tax liability of every  
29 financial organization under this article, in an amount  
30 equal to a portion of the increase in the adjusted  
31 primary tax liability of the financial organization under  
32 this article for the taxable year, over the amount of the  
33 adjusted primary tax liability of the financial  
34 organization under this article for the taxable year  
35 beginning immediately on or after the first day of  
36 January, two thousand eight. The portion of the  
37 increase in the adjusted primary tax liability under this  
38 article that shall be allowed as a credit under this  
39 section is eighty percent for taxable years beginning on  
40 an after the first day of January, two thousand nine;  
41 sixty percent for taxable years beginning on and after  
42 the first day of January, two thousand ten; forty percent  
43 for taxable years beginning on and after the first day of  
44 January, two thousand eleven; twenty percent for  
45 taxable years beginning on and after the first day of  
46 January, two thousand twelve; ten percent for taxable  
47 years beginning on and after the first day of January,  
48 two thousand thirteen; and zero percent for taxable  
49 years beginning on and after the first day of January,  
50 two thousand fourteen; *Provided*, That the credit  
51 allowed by this section may not be used to reduce the  
52 adjusted primary tax liability of any financial  
53 organization under this article in any taxable year  
54 below one million dollars.

**§11-24-13a. Method of filing for business taxes.**

1 (a) *Privilege to file consolidated return.* —

2 (1) An affiliated group of corporations as defined for  
3 purposes of filing a consolidated federal income tax

4 return shall, subject to the provisions of this section and  
5 in accordance with any regulations prescribed by the  
6 Tax Commissioner, have the privilege of filing a  
7 consolidated return with respect to the tax imposed by  
8 this article for the taxable year in lieu of filing separate  
9 returns. The making of a consolidated return shall be  
10 upon the condition that all corporations which at any  
11 time during the taxable year have been members of the  
12 affiliated group are included in the return and consent  
13 to the filing of the return. The filing of a consolidated  
14 return is considered consent. When a corporation is a  
15 member of an affiliated group for a fractional part of  
16 the year, the consolidated return shall include the  
17 income of the corporation for that part of the year  
18 during which it is a member of the affiliated group.

19 (2) For tax years beginning on and after the first day  
20 of January, two thousand nine, the provisions of this  
21 subsection are null and void and of no further force or  
22 effect.

23 (b) *Election binding.* —

24 (1) If an affiliated group of corporations elects to file  
25 a consolidated return under this article for any taxable  
26 year ending after the thirtieth day of June, one thousand  
27 nine hundred eighty-seven, the election once made shall  
28 not be revoked for any subsequent taxable year without  
29 the written approval of the Tax Commissioner  
30 consenting to the revocation.

31 (2) For tax years beginning on and after the first day  
32 of January, two thousand nine, the provisions of this  
33 subsection are null and void and of no further force or  
34 effect.

35 (c) *Consolidated return - financial organizations.* —

36 An affiliated group that includes one or more financial  
37 organizations may elect under this section to file a  
38 consolidated return when that affiliated group complies  
39 with all of the following rules:

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

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

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

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

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

62 (C) The pro forma West Virginia taxable income of all

63 other members included in the federal consolidated  
64 income tax return, as shown on a combined pro forma  
65 West Virginia return prepared for all nonfinancial  
66 organization members, except that income, income  
67 adjustments and exclusions, apportionment factors and  
68 other items considered when determining tax liability  
69 shall not be included in the pro forma return prepared  
70 under this paragraph for a member that is totally  
71 exempt from tax under section five of this article or for  
72 a member that is subject to a different special industry  
73 apportionment rule provided in this article. When a  
74 different special industry apportionment rule applies,  
75 the West Virginia taxable income of a member subject  
76 to that special industry apportionment rule is  
77 determined on a separate pro forma West Virginia  
78 return for the member subject to that special industry  
79 rule and the West Virginia taxable income determined  
80 shall be included in the consolidated return.

81 (4) The West Virginia consolidated return is prepared  
82 in accordance with regulations of the Tax Commissioner  
83 promulgated as provided in article three, chapter  
84 twenty-nine-a of this code.

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

89 (6) For tax years beginning on and after the first day  
90 of January, two thousand nine, the provisions of this  
91 subsection are null and void and of no further force or  
92 effect.

93 (d) *Combined return.* —

94 (1) A combined return may be filed under this article  
95 by a unitary group, including a unitary group that  
96 includes one or more financial organizations, only  
97 pursuant to the prior written approval of the Tax  
98 Commissioner. A request for permission to file a  
99 combined return must be filed on or before the statutory  
100 due date of the return, determined without inclusion of  
101 any extension of time to file the return. Permission to  
102 file a combined return may be granted by the Tax  
103 Commissioner only when taxpayer submits evidence  
104 that conclusively establishes that failure to allow the  
105 filing of a combined return will result in an  
106 unconstitutional distortion of taxable income. When  
107 permission to file a combined return is granted,  
108 combined filing will be allowed for the tax years stated  
109 in the Tax Commissioner's letter. The combined return  
110 must be filed in accordance with regulations of the Tax  
111 Commissioner promulgated in accordance with article  
112 three, chapter twenty-nine-a of this code.

113 (2) For tax years beginning on and after the first day  
114 of January, two thousand nine, the provisions of this  
115 subsection are null and void and of no further force or  
116 effect.

117 (e) *Method of filing under this article deemed*  
118 *controlling for purposes of other business taxes articles.*  
119 —

120 Notwithstanding the provisions of section nine-a,  
121 article twenty-three of this chapter or any other  
122 provision of this code to the contrary, the taxpayer shall  
123 file on the same basis under article twenty-three of this  
124 chapter as the taxpayer files under this article for the  
125 taxable year.

126 (f) *Regulations.* —

127 The Tax Commissioner shall prescribe regulations as  
128 he or she considers necessary in order that the tax  
129 liability of any affiliated group or combined group of  
130 corporations filing a consolidated return, or of any  
131 unitary group of corporations filing a combined return,  
132 and of each corporation in the affiliated or unitary  
133 group, both during and after the period of affiliation,  
134 may be returned, determined, computed, assessed,  
135 collected and adjusted in a manner as the Tax  
136 Commissioner considers necessary to clearly reflect the  
137 income tax liability and the income factors necessary  
138 for the determination of liability and in order to prevent  
139 avoidance of tax liability.

140 (g) *Computation and payment of tax.* —

141 In any case in which a consolidated or combined  
142 return is filed, or required to be filed, the tax due under  
143 this article from the affiliated, combined or unitary  
144 group shall be determined, computed, assessed,  
145 collected and adjusted in accordance with regulations  
146 prescribed by the Tax Commissioner, in effect on the  
147 last day prescribed by section thirteen of this article for  
148 the filing of the return, and such affiliated, combined or  
149 unitary group, as the case may be, shall be treated as the  
150 taxpayer. However, when any member of an affiliated,  
151 combined or unitary group that files a consolidated or  
152 combined return under this article is allowed to claim  
153 credit against its tax liability under this article for  
154 payment of any other tax, the amount of credit allowed  
155 may not exceed that member's proportionate share of  
156 the affiliated, combined or unitary group's precredit tax  
157 liability under this article, as shown on its pro forma

158 return.

159 (h) *Consolidated or combined return may be required.*

160 —

161 The Tax Commissioner may require any person or  
162 corporation to make and file a separate return or to  
163 make and file a composite, unitary, consolidated or  
164 combined return, as the case may be, in order to clearly  
165 reflect the taxable income of such corporations.

166 (i) *Effective date.* —

167 The amendments to this section made by chapter one  
168 hundred seventy-nine, Acts of the Legislature in the  
169 year one thousand nine hundred ninety, shall apply to  
170 all taxable years ending after the eighth day of March,  
171 one thousand nine hundred ninety. Amendments to this  
172 article enacted by this act in the year one thousand nine  
173 hundred ninety-six shall apply to taxable years  
174 beginning on or after the first day of January, one  
175 thousand nine hundred ninety-six, except that financial  
176 organizations that are part of an affiliated group may  
177 elect, after the effective date of this act, to file a  
178 consolidated return prepared in accordance with the  
179 provisions of this section, as amended, and subject to  
180 applicable statutes of limitation, for taxable years  
181 beginning on or after the first day of January, one  
182 thousand nine hundred ninety-one, but before the first  
183 day of January, one thousand nine hundred ninety-six,  
184 notwithstanding provisions then in effect prohibiting  
185 out-of-state financial organizations from filing  
186 consolidated returns for those years: *Provided*, That  
187 when the statute of limitation on filing an amended  
188 return for any of those years expires before the first day

189 of July, one thousand nine hundred ninety-six, the  
190 consolidated return for that year, if filed, must be filed  
191 by said first day of July.

192 (j) *Combined reporting required.* —

193 For tax years beginning on and after the first day of  
194 January, two thousand nine, and notwithstanding the  
195 provisions of section nine-a, article twenty-three of this  
196 chapter or any other provision of this code to the  
197 contrary except the last sentence of this subsection, any  
198 taxpayer engaged in a unitary business with one or  
199 more other corporations shall file a combined report  
200 which includes the income, determined under section  
201 thirteen-c or thirteen-d of this article, and the  
202 allocation and apportionment of income provisions of  
203 this article, of all corporations that are members of the  
204 unitary business, and other information as required by  
205 the Tax Commissioner. Notwithstanding any provision  
206 to the contrary in this article, the income of an  
207 insurance company, the allocation or apportionment of  
208 income related thereto and the apportionment factors of  
209 an insurance company shall not be included in a  
210 combined report filed under this article unless  
211 specifically required to be included by the Tax  
212 Commissioner.

213 (k) *Combined reporting at Tax Commissioner's*  
214 *discretion.* —

215 (1) The Tax Commissioner may require the combined  
216 report to include the income and associated  
217 apportionment factors of any persons that are not  
218 included pursuant to subsection (j) of this section, but  
219 that are members of a unitary business, in order to

220 reflect proper apportionment of income of the entire  
221 unitary businesses.

222 (2) If the Tax Commissioner determines that the  
223 reported income or loss of a taxpayer engaged in a  
224 unitary business with any person not included pursuant  
225 to subsection (j) of this section represents an avoidance  
226 or evasion of tax by the taxpayer, the Tax Commissioner  
227 may, on a case-by-case basis, require all or any part of  
228 the income and associated apportionment factors be  
229 included in the taxpayer's combined report.

230 (3) With respect to inclusion of associated  
231 apportionment factors pursuant to this section, the Tax  
232 Commissioner may require the exclusion of any one or  
233 more of the factors, the inclusion of one or more  
234 additional factors which will fairly represent the  
235 taxpayer's business activity in this state, or the  
236 employment of any other method to effectuate a proper  
237 reflection of the total amount of income subject to  
238 apportionment and an equitable allocation and  
239 apportionment of the taxpayer's income.

**§11-24-13c. Determination of taxable income or loss using  
combined report.**

1 (a) The use of a combined report does not disregard  
2 the separate identities of the taxpayer members of the  
3 combined group. Each taxpayer member is responsible  
4 for tax based on its taxable income or loss apportioned  
5 or allocated to this state, which shall include, in  
6 addition to other types of income, the taxpayer  
7 member's apportioned share of business income of the  
8 combined group, where business income of the  
9 combined group is calculated as a summation of the

10 individual net business incomes of all members of the  
11 combined group. A member's net business income is  
12 determined by removing all but business income,  
13 expense and loss from that member's total income, as  
14 provided in this section and section thirteen-d of this  
15 article.

16 (b) *Components of income subject to tax in this state;*  
17 *application of tax credits and post-apportionment*  
18 *deductions. —*

19 (1) Each taxpayer member is responsible for tax based  
20 on its taxable income or loss apportioned or allocated to  
21 this state, which shall include:

22 (A) Its share of any business income apportionable to  
23 this state of each of the combined groups of which it is  
24 a member, determined under subsection (c) of this  
25 section;

26 (B) Its share of any business income apportionable to  
27 this state of a distinct business activity conducted  
28 within and without the state wholly by the taxpayer  
29 member, determined under the provisions for  
30 apportionment of business income set forth in this  
31 article;

32 (C) Its income from a business conducted wholly by  
33 the taxpayer member entirely within the state;

34 (D) Its income sourced to this state from the sale or  
35 exchange of capital or assets, and from involuntary  
36 conversions, as determined under subsection (g), section  
37 thirteen-d of this article;

38 (E) Its nonbusiness income or loss allocable to this  
39 state, determined under the provisions for allocation of  
40 nonbusiness income set forth in this article;

41 (F) Its income or loss allocated or apportioned in an  
42 earlier year, required to be taken into account as state  
43 source income during the income year, other than a net  
44 operating loss; and

45 (G) Its net operating loss carryover. If the taxable  
46 income computed pursuant to this section and section  
47 thirteen-d of this article results in a loss for a taxpayer  
48 member of the combined group, that taxpayer member  
49 has a West Virginia net operating loss, subject to the net  
50 operating loss limitations, and carryover provisions of  
51 this article. This West Virginia net operating loss is  
52 applied as a deduction in a prior or subsequent year  
53 only if that taxpayer has West Virginia source positive  
54 net income, whether or not the taxpayer is or was a  
55 member of a combined reporting group in the prior or  
56 subsequent year: *Provided*, That net operating loss  
57 carryovers that were earned during a tax year in which  
58 the taxpayer filed a consolidated return under this  
59 article may be applied as a deduction from the West  
60 Virginia taxable income of any member of the  
61 taxpayer's controlled group until the net operating loss  
62 carryover is used or expires pursuant to the net  
63 operating loss provisions of this article.

64 (2) Except where otherwise provided, no tax credit or  
65 post-apportionment deduction earned by one member  
66 of the group, but not fully used by or allowed to that  
67 member, may be used, in whole or in part, by another  
68 member of the group or applied, in whole or in part,  
69 against the total income of the combined group; and a

70 post-apportionment deduction carried over into a  
71 subsequent year as to the member that incurred it, and  
72 available as a deduction to that member in a subsequent  
73 year, will be considered in the computation of the  
74 income of that member in the subsequent year  
75 regardless of the composition of that income as  
76 apportioned, allocated or wholly within this state:  
77 *Provided*, That unused and unexpired economic  
78 development tax credits that were earned during a tax  
79 year in which the taxpayer filed a consolidated return  
80 under this article may, if otherwise allowed within the  
81 statutory limitations applicable to the tax credit, be  
82 used, in whole or in part, against taxes imposed by this  
83 article on any member of the taxpayer's combined group  
84 to the extent the credits would have been allowed had  
85 the taxpayer continued to file a consolidated return.  
86 For purposes of this section the term "economic  
87 development tax credit" means, and is limited to, a tax  
88 credit asserted on a tax return under article thirteen-c,  
89 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j,  
90 thirteen-q, thirteen-r or thirteen-s of this chapter or  
91 under article one, chapter five-e of this code.

92 (c) *Determination of taxpayer's share of the business*  
93 *income of a combined group apportionable to this state.*

94 —

95 The taxpayer's share of the business income  
96 apportionable to this state of each combined group of  
97 which it is a member shall be the product of:

98 (1) The business income of the combined group,  
99 determined under section thirteen-d of this article; and

100 (2) The taxpayer member's apportionment percentage,

101 determined in accordance with this article, including in  
102 the property, payroll and sales factor numerators the  
103 taxpayer's property, payroll and sales, respectively,  
104 associated with the combined group's unitary business  
105 in this state and including in the denominator the  
106 property, payroll and sales of all members of the  
107 combined group, including the taxpayer, which  
108 property, payroll and sales are associated with the  
109 combined group's unitary business wherever located.

110 The property, payroll and sales of a partnership shall  
111 be included in the determination of the partner's  
112 apportionment percentage in proportion to a ratio the  
113 numerator of which is the amount of the partner's  
114 distributive share of partnership's unitary income  
115 included in the income of the combined group in  
116 accordance with section thirteen-d of this article and  
117 the denominator of which is the amount of the  
118 partnership's total unitary income.

**§11-24-13d. Determination of the business income of the  
combined group.**

1 The business income of a combined group is  
2 determined as follows:

3 (a) From the total income of the combined group,  
4 determined under subsection (b) of this section, subtract  
5 any income and add any expense or loss, other than the  
6 business income, expense or loss of the combined group.

7 (b) Except as otherwise provided, the total income of  
8 the combined group is the sum of the income of each  
9 member of the combined group determined under  
10 federal income tax laws, as adjusted for state purposes,

11 as if the member were not consolidated for federal  
12 purposes. The income of each member of the combined  
13 group shall be determined as follows:

14 (1) For any member incorporated in the United States,  
15 or included in a consolidated federal corporate income  
16 tax return, the income to be included in the total income  
17 of the combined group shall be the taxable income for  
18 the corporation after making allowable adjustments  
19 under this article.

20 (2) For any member not included in subdivision (1) of  
21 this subsection, the income to be included in the total  
22 income of the combined group shall be determined as  
23 follows:

24 (A) A profit and loss statement shall be prepared for  
25 each foreign branch or corporation in the currency in  
26 which the books of account of the branch or corporation  
27 are regularly maintained.

28 (B) Adjustments shall be made to the profit and loss  
29 statement to conform it to the accounting principles  
30 generally accepted in the United States for the  
31 preparation of such statements except as modified by  
32 this regulation.

33 (C) Adjustments shall be made to the profit and loss  
34 statement to conform it to the tax accounting standards  
35 required by this article.

36 (D) Except as otherwise provided by regulation, the  
37 profit and loss statement of each member of the  
38 combined group, and the apportionment factors related  
39 thereto, whether United States or foreign, shall be

40 translated into the currency in which the parent  
41 company maintains its books and records.

42 (E) Income apportioned to this state shall be expressed  
43 in United States dollars.

44 (3) In lieu of the procedures set forth in subdivision (2)  
45 of this subsection, and subject to the determination of  
46 the Tax Commissioner that it reasonably approximates  
47 income as determined under this article, any member  
48 not included in subdivision (1) of this subsection may  
49 determine its income on the basis of the consolidated  
50 profit and loss statement which includes the member  
51 and which is prepared for filing with the Securities and  
52 Exchange Commission by related corporations. If the  
53 member is not required to file with the Securities and  
54 Exchange Commission, the Tax Commissioner may  
55 allow the use of the consolidated profit and loss  
56 statement prepared for reporting to shareholders and  
57 subject to review by an independent auditor. If above  
58 statements do not reasonably approximate income as  
59 determined under this article, the Tax Commissioner  
60 may accept those statements with appropriate  
61 adjustments to approximate that income.

62 (c) If a unitary business includes income from a  
63 partnership, the income to be included in the total  
64 income of the combined group shall be the member of  
65 the combined group's direct and indirect distributive  
66 share of the partnership's unitary business income.

67 (d) All dividends paid by one to another of the  
68 members of the combined group shall, to the extent  
69 those dividends are paid out of the earnings and profits  
70 of the unitary business included in the combined report,

71 in the current or an earlier year, be eliminated from the  
72 income of the recipient. Except as otherwise provided,  
73 this provision shall not apply to dividends received from  
74 members of the unitary business which are not a part of  
75 the combined group. Except when specifically required  
76 by the Tax Commissioner to be included, all dividends  
77 paid by an insurance company directly or indirectly to  
78 a corporation that is part of a unitary business with the  
79 insurance company shall be deducted or eliminated  
80 from the income of the recipient of the dividend.

81 (e) Except as otherwise provided by regulation,  
82 business income from an intercompany transaction  
83 between members of the same combined group shall be  
84 deferred in a manner similar to 26 C. F. R. 1.1502-13.  
85 Upon the occurrence of any of the following events,  
86 deferred business income resulting from an  
87 intercompany transaction between members of a  
88 combined group shall be restored to the income of the  
89 seller and shall be apportioned as business income  
90 earned immediately before the event:

91 (1) The object of a deferred intercompany transaction  
92 is:

93 (A) Resold by the buyer to an entity that is not a  
94 member of the combined group;

95 (B) Resold by the buyer to an entity that is a member  
96 of the combined group for use outside the unitary  
97 business in which the buyer and seller are engaged; or

98 (C) Converted by the buyer to a use outside the  
99 unitary business in which the buyer and seller are  
100 engaged; or

101 (2) The buyer and seller are no longer members of the  
102 same combined group, regardless of whether the  
103 members remain unitary.

104 (f) A charitable expense incurred by a member of a  
105 combined group shall, to the extent allowable as a  
106 deduction pursuant to Internal Revenue Code Section  
107 170, be subtracted first from the business income of the  
108 combined group, subject to the income limitations of  
109 that section applied to the entire business income of the  
110 group and any remaining amount shall then be treated  
111 as a nonbusiness expense allocable to the member that  
112 incurred the expense, subject to the income limitations  
113 of that section applied to the nonbusiness income of that  
114 specific member. Any charitable deduction disallowed  
115 under the foregoing rule, but allowed as a carryover  
116 deduction in a subsequent year, shall be treated as  
117 originally incurred in the subsequent year by the same  
118 member and the rules of this section shall apply in the  
119 subsequent year in determining the allowable deduction  
120 in that year.

121 (g) Gain or loss from the sale or exchange of capital  
122 assets, property described by Internal Revenue Code  
123 Section 1231(a)(3) and property subject to an  
124 involuntary conversion shall be removed from the total  
125 separate net income of each member of a combined  
126 group and shall be apportioned and allocated as follows:

127 (1) For each class of gain or loss (short term capital,  
128 long term capital, Internal Revenue Code Section 1231  
129 and involuntary conversions) all members' business gain  
130 and loss for the class shall be combined without netting  
131 between classes and each class of net business gain or  
132 loss separately apportioned to each member using the

133 member's apportionment percentage determined under  
134 subsection (c), section thirteen-c of this article.

135 (2) Each taxpayer member shall then net its  
136 apportioned business gain or loss for all classes,  
137 including any such apportioned business gain and loss  
138 from other combined groups, against the taxpayer  
139 member's nonbusiness gain and loss for all classes  
140 allocated to this state, using the rules of Internal  
141 Revenue Code Sections 1222 and 1231, without regard  
142 to any of the taxpayer member's gains or losses from the  
143 sale or exchange of capital assets, Section 1231 property  
144 and involuntary conversions which are nonbusiness  
145 items allocated to another state.

146 (3) Any resulting state source income or loss, if the loss  
147 is not subject to the limitations of Internal Revenue  
148 Code Section 1211 of a taxpayer member produced by  
149 the application of the preceding subsections shall then  
150 be applied to all other state source income or loss of that  
151 member.

152 (4) Any resulting state source loss of a member that is  
153 subject to the limitations of Section 1211 shall be  
154 carried over by that member and shall be treated as  
155 state source short-term capital loss incurred by that  
156 member for the year for which the carryover applies.

157 (h) Any expense of one member of the unitary group  
158 which is directly or indirectly attributable to the  
159 nonbusiness or exempt income of another member of the  
160 unitary group shall be allocated to that other member as  
161 corresponding nonbusiness or exempt expense, as  
162 appropriate.

**§11-24-13f. Water's-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.**

1 (a) *Water's-edge reporting.* —

2 Absent an election under subsection (b) of this section  
3 to report based upon a worldwide unitary combined  
4 reporting basis, taxpayer members of a unitary group  
5 shall determine each of their apportioned shares of the  
6 net business income or loss of the combined group on a  
7 water's-edge unitary combined reporting basis. In  
8 determining tax under this article and article twenty-  
9 three of this chapter on a water's-edge unitary  
10 combined reporting basis, taxpayer members shall take  
11 into account all or a portion of the income and  
12 apportionment factors of only the following members  
13 otherwise included in the combined group pursuant to  
14 section thirteen-a of this article:

15 (1) The entire income and apportionment factors of  
16 any member incorporated in the United States or  
17 formed under the laws of any state, the District of  
18 Columbia or any territory or possession of the United  
19 States;

20 (2) The entire income and apportionment factors of  
21 any member, regardless of the place incorporated or  
22 formed, if the average of its property, payroll and sales  
23 factors within the United States is twenty percent or  
24 more;

25 (3) The entire income and apportionment factors of

26 any member which is a domestic international sales  
27 corporation as described in Internal Revenue Code  
28 Sections 991 to 994, inclusive; a foreign sales  
29 corporation as described in Internal Revenue Code  
30 Sections 921 to 927, inclusive; or any member which is  
31 an export trade corporation, as described in Internal  
32 Revenue Code Sections 970 to 971, inclusive;

33 (4) Any member not described in subdivision (1), (2) or  
34 (3) of this subsection shall include its business income  
35 which is effectively connected, or treated as effectively  
36 connected under the provisions of the Internal Revenue  
37 Code, with the conduct of a trade or business within the  
38 United States and, for that reason, subject to federal  
39 income tax;

40 (5) Any member that is a "controlled foreign  
41 corporation", as defined in Internal Revenue Code  
42 Section 957, to the extent of the income of that member  
43 that is defined in Section 952 of Subpart F of the  
44 Internal Revenue Code (Subpart F income) not  
45 excluding lower-tier subsidiaries' distributions of such  
46 income which were previously taxed, determined  
47 without regard to federal treaties, and the  
48 apportionment factors related to that income; any item  
49 of income received by a controlled foreign corporation  
50 shall be excluded if such income was subject to an  
51 effective rate of income tax imposed by a foreign  
52 country greater than ninety percent of the maximum  
53 rate of tax specified in Internal Revenue Code Section  
54 11;

55 (6) Any member that earns more than twenty percent  
56 of its income, directly or indirectly, from intangible  
57 property or service-related activities that are deductible

58 against the business income of other members of the  
59 water's-edge group, to the extent of that income and the  
60 apportionment factors related thereto; and

61 (7) The entire income and apportionment factors of  
62 any member that is doing business in a tax haven  
63 defined as being engaged in activity sufficient for that  
64 tax haven jurisdiction to impose a tax under United  
65 States constitutional standards. If the member's  
66 business activity within a tax haven is entirely outside  
67 the scope of the laws, provisions and practices that  
68 cause the jurisdiction to meet the criteria set forth in the  
69 definition of a tax haven, the activity of the member  
70 shall be treated as not having been conducted in a tax  
71 haven.

72 (b) *Initiation and withdrawal of election to report*  
73 *based on worldwide unitary combined reporting. —*

74 (1) An election to report West Virginia tax based on  
75 worldwide unitary combined reporting is effective only  
76 if made on a timely filed, original return for a tax year  
77 by every member of the unitary business subject to tax  
78 under this article. The Tax Commissioner shall develop  
79 ~~rules and regulations~~ *K DEN* governing the impact, if any, on  
80 the scope or application of a worldwide unitary  
81 combined reporting election, including termination or  
82 deemed election, resulting from a change in the  
83 composition of the unitary group, the combined group,  
84 the taxpayer members and any other similar change.

85 (2) The election shall constitute consent to the  
86 reasonable production of documents and taking of  
87 depositions in accordance with the provisions of this  
88 code.

Enr. Com. Sub for S. B. No. 680] 96

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

*C. White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell Holmes*  
.....  
Clerk of the Senate

*Gregory M. Paul*  
.....  
Clerk of the House of Delegates

*Carl By Tomblini*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *31<sup>st</sup>* Day of *March* ....., 2008.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 24 2008

Time 3:08 jmr