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That §11-23-5b of the Code of West Virginia, 1931, as amended, be repealed; that §11-13S-4 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-13Y-1, §11-13Y-2, §11-13Y-3,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


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

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

(1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which
the property purchased for manufacturing investment
is first placed in service or use in this state;

(2) Severance tax. — The credit is applied to reduce
the severance tax imposed under article thirteen-a of
this chapter (determined before application of the credit
allowed by section three, article twelve-b of this chapter
and before any other allowable credits against tax and
before application of the annual exemption allowed by
section ten, article thirteen-a of this chapter). The
amount of annual credit allowed may not reduce the
severance tax, imposed under article thirteen-a of this
chapter, below fifty percent of the amount which would
be imposed for such taxable year in the absence of this
credit against tax: Provided, That for tax years
beginning on and after the first day of January, two
thousand nine, the amount of annual credit allowed may
not reduce the severance tax, imposed under article
thirteen-a of this chapter, below forty percent of the
amount which would be imposed for such taxable year
in the absence of this credit against tax. When in any
taxable year the taxpayer is entitled to claim credit
under this article and article thirteen-d of this chapter,
the total amount of all credits allowable for the taxable
year may not reduce the amount of the severance tax,
imposed under article thirteen-a of this chapter, below
fifty percent of the amount which would be imposed for
such taxable year (determined before application of the
credit allowed by section three, article twelve-b of this
chapter and before any other allowable credits against
tax and before application of the annual exemption
allowed by section ten, article thirteen-a of this
chapter): Provided, however, That when in any taxable
year beginning on and after the first day of January.
two thousand nine, the taxpayer is entitled to claim
credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which would be imposed for such taxable year as determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter;

(3) Business franchise tax. —

After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the business franchise tax imposed under article twenty-three of this chapter (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: Provided, That for tax years beginning on and after the first day of January, two thousand nine, the amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which would be imposed for such taxable year as determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter;

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
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
credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax):

Provided, however, That when in any taxable year beginning on and after the first day of January, two thousand nine, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined before application of any other allowable credits against tax;

(5) Pass-through entities. —

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

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax): Provided, That for tax years beginning on and after the first day of January, two thousand nine, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes as determined before application of any other allowable credits against tax.

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

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

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

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

(d) Application for credit required. —

(1) Application required. — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the Tax Commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage
rates and benefits paid to employees filling the new jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use.

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

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


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


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

(b) Terms defined. —

(1) "Affiliate" means and includes all persons, as
defined in this section, which are affiliates of each other when either directly or indirectly:

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

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

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

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

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

(5) "Eligible taxpayer" means any manufacturing business that is subject to the tax imposed under article twenty-three or twenty-four of this chapter, or both: Provided, That taxpayers owning property assessed by
the Board of Public Works are not eligible taxpayers for purposes of this article. "Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers engaged in a unitary business, in which one or more members of the affiliated group is a person subject to the tax imposed under article twenty-three or article twenty-four of this chapter, or both. Affiliates not engaged in the unitary business do not qualify as eligible taxpayers.

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

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

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

(9) "Partnership" and "partner" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a trust or estate, a
corporation or a sole proprietorship. The term "partner" includes a member in a syndicate, group, pool, joint venture or organization.

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

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

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

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

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

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

For purposes of this article, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The
ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the United States 
Internal Revenue Code, as amended: *Provided, That* paragraph (3), Section 267(c) of the United States 
Internal Revenue Code shall not apply.

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

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

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

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

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

§11-13Y-4. Amount of credit allowed.

(a) *Credit allowed.* — Eligible taxpayers shall be allowed a credit against the tax imposed under article twenty-three or twenty-four of this chapter, the application of which and the amount of which shall be determined as provided in this article.
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(b) *Amount of credit.* — The amount of credit allowed
to the eligible taxpayer is the amount of West Virginia
*ad valorem* property tax paid on the value of
manufacturing inventory of the eligible taxpayer during
the corporate net income tax year and business
franchise tax year.

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

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

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

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

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

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

(a) Transfer or sale of assets. —

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

(2) For any taxable year during which a transfer, or sale of the business assets of an eligible taxpayer to a successor eligible taxpayer under this section occurs, or a merger occurs pursuant to which credit is allowed under this article, the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on
the number of days during the taxable year that each taxpayer based and the number of days during the taxable year that each taxpayer owned the business assets transferred.

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

(c) **Mergers.** —

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

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

(d) No provision of this section or of this article shall be construed to allow sales or other transfers of the tax
credit allowed under this article. The credit allowed under this article can be transferred only in circumstances where there is a valid successorship as described under this section.

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

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

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

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

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

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


This article shall be effective for corporate net income tax years and business franchise tax years beginning on 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 general formula set forth in section five of this article for apportioning the tax base of corporations and partnerships taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those
organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section five of this article may not be used to apportion the tax base of financial organizations which shall use only the apportionment formula and methods set forth in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the
(2) *Denominator.* — The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(g) **Limited tax credit for certain financial organizations for certain periods.** — A credit shall be allowed against the tax imposed by this article on a financial organization with its commercial domicile in this state that acquires a financial organization that does not have its commercial domicile in this state: Provided, That the goodwill associated with the acquisition is first added to the net equity of the financial organization with its commercial domicile in this state on or after the first day of January two thousand eight: Provided, however, That the prior recordation of the goodwill associated with the acquisition on the balance sheet of a financial organization that does not have its commercial domicile in this state shall not affect, limit or reduce the availability of the credit authorized by this subsection. The credit shall equal fifty percent of the goodwill associated with the acquisition in the amount first recorded on the balance sheet of the financial organization with its commercial domicile in this state, multiplied by the tax rate applicable to the financial organization under this article for the taxable year. For purposes of this subsection, the term "goodwill" shall have the meaning set forth in the capital adequacy guidelines for bank holding companies established by the Federal Reserve Board in 12 C. F. R. 225, Appendix A, as the same may be revised from time to time.
(h) Effective date. — The provisions of this section enacted in chapter one hundred sixty-seven, Acts of the Legislature, one thousand nine hundred ninety-one, shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one. The amendments to this section, enacted in the year one thousand nine hundred ninety-six, shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five. The amendments to this section, enacted in the year two thousand eight, shall apply to taxable years beginning after the thirty-first day of December, two thousand eight: Provided, That the amendments to subsection (g) of this section, enacted in the year two thousand eight, shall apply to taxable years beginning after the thirty-first day of December, two thousand seven.

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

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

(b) Amount of tax and rate; effective date. —
(1) On and after the first day of July, one thousand nine hundred eighty-seven, the amount of tax shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: Provided, That when the taxpayer's first taxable year under this article is a short taxable year, the taxpayer's liability shall be prorated based upon the ratio which the number of months in which such short taxable year bears to twelve: Provided, however, That this subdivision shall not apply to taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine.

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

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

(4) Taxable years after the thirty-first day of December, two thousand six. — For taxable years beginning on or after the first day of January, two thousand seven, the amount of tax due under this article shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base as determined under this article.
(5) Taxable years after the thirty-first day of December, two thousand eight. — For taxable years beginning on or after the first day of January, two thousand nine, the amount of tax due under this article shall be the greater of fifty dollars or forty-eight one hundredths of one percent of the value of the tax base as determined under this article.

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

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

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

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

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

(c) Short taxable years. — When the taxpayer's taxable year for federal income tax purposes is a short taxable year, the tax determined by application of the tax rate to the taxpayer's tax base shall be prorated based upon the ratio which the number of months in such short taxable year bears to twelve: Provided, That when the taxpayer's first taxable year under this article is less than twelve months, the taxpayer's liability shall be prorated based upon the ratio which the number of months the taxpayer was doing business in this state bears to twelve, but in no event shall the tax due be less than fifty dollars.
§11-23-17b. Application of tax credits.

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.

1 For purposes of this article:
(1) **Business income.** — The term “business income” means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations and includes all income which is apportionable under the Constitution of the United States.

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

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

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

(5) **Corporation.** — “Corporation” means any corporation as defined by the laws of this state or organization of any kind treated as a corporation for tax purposes under the laws of this state, wherever located, which if it were doing business in this state would be
subject to the tax imposed by this article. The business conducted by a partnership which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation's distributive share of the partnership income, inclusive of guaranteed payments to the extent prescribed by regulation. The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

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

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

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

(9) Federal Form 1120. — The term "Federal Form 1120" means the annual federal income tax return of
any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) Secured or unsecured consumer loans;

(II) Installment obligations;

(III) Mortgages or other loans secured by real estate or tangible personal property;
(IV) Credit card loans;

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

(VI) Loans arising in factoring.

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

(iii) Operating a credit card business.

(iv) Rendering estate or trust services.

(v) Receiving, maintaining or otherwise handling deposits.

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

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

(13) Includes and including. — The terms “includes” and “including”, when used in a definition contained in this article, do not exclude other things otherwise within the meaning of the term being defined.
(14) Insurance company. — The term "insurance company" means any corporation subject to taxation under section twenty-two, article three, chapter twenty-nine of this code or chapter thirty-three of this code or an insurance carrier subject to the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code or any corporation that would be subject to taxation under any of those provisions were its business transacted in this state.

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

(16) Nonbusiness income. — The term "nonbusiness income" means all income other than business income.

(17) "Partnership" means a general or limited partnership or organization of any kind treated as a partnership for tax purposes under the laws of this state.

(18) Person. — The term "person" is considered interchangeable with the term "corporation" in this section. The term "person" means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, association, corporation whether or not the corporation is, or would be if doing business in this state, subject to the tax imposed by this article, company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee.
or organization of any kind.

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

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

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

(22) **State.** — The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof.

(23) **Taxable year, tax year.** — The term "taxable year" or "tax year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

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

(25) **Tax Commissioner.** — The term "Tax
(26) "Tax haven" means a jurisdiction that, for a particular tax year in question: (A) Is identified by the Organization for Economic Cooperation and Development as a tax haven or as having a harmful preferential tax regime; or (B) a jurisdiction that has no, or nominal, effective tax on the relevant income and: (i) That has laws or practices that prevent effective exchange of information for tax purposes with other governments regarding taxpayers subject to, or benefitting from, the tax regime; (ii) that lacks transparency, for purposes of this definition, a tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open to public scrutiny and apparent or are not consistently applied among similarly situated taxpayers; (iii) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy; (iv) explicitly or implicitly excludes the jurisdiction’s resident taxpayers from taking advantage of the tax regime’s benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction’s domestic market; or (v) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy. For purposes of this definition, the phrase "tax regime" means a set or system of rules, laws, regulations or practices by which taxes are imposed on any person, corporation or entity, or on any income, property, incident, indicia or activity pursuant
(27) **Taxpayer.** — The term "taxpayer" means any person subject to the tax imposed by this article.

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

(29) **This state.** — The term "this state" means the State of West Virginia.

(30) "United States" means the United States of America and includes all of the states of the United States, the District of Columbia and United States territories and possessions.

(31) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. For purposes of this article and article twenty-three of this chapter, any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or the percentage of its distributive or any other share of partnership income. A business conducted directly or indirectly by one corporation through its direct or indirect interest in a
partnership is unitary with that portion of a business conducted by one or more other corporations through their direct or indirect interest in a partnership if there is a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts and the corporations are members of the same commonly controlled group.

(32) West Virginia taxable income. — The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in this article: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be the portion of its taxable income as defined and adjusted as is allocated or apportioned to this state under the provisions of this article.

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

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

(b) Effective date. — This section as enacted in the
§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.

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

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

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

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

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

(5) In the case of taxable periods beginning on or after
the first day of January, two thousand nine, a tax is
hereby imposed for each taxable year on the West
Virginia taxable income of every domestic or foreign
corporation engaging in business in this state or
deriving income from property, activity or other sources
in this state, except corporations exempt under section
five of this article, at the rate of eight and one-half
percent.
(6) In the case of taxable periods beginning on or after the first day of January, two thousand twelve, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of seven and three-quarters percent: Provided, That the reduction in tax authorized by this subsection shall be suspended if the combined balance of funds as of the thirtieth day of June, two thousand eleven, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the general revenue fund budgeted for the fiscal year commencing the first day of July, two thousand eleven: Provided, however, That the rate reduction schedule will resume in the calendar year immediately following any subsequent fiscal year when the combined balance of funds as of the thirtieth day of June of that fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B next equals or exceeds ten percent of the general revenue fund budgeted for the immediately succeeding fiscal year.

(7) In the case of taxable periods beginning on or after the first day of January, two thousand thirteen, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of seven percent:
Provided, That the reduction in tax authorized by this subsection shall be suspended for one calendar year subsequent to the occurrence of the suspension of the reduction in tax authorized by subdivision (6) of this section: Provided, however, That the reduction in tax on the first day of any calendar year authorized by this subsection shall be suspended if the combined balance of funds as of the thirtieth day of June of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the general revenue fund budgeted for the fiscal year commencing the first day of July of the preceding year.

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

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

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

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

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

(c) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the
taxpayer is not "taxable in another state": Provided,
That for tax years beginning before the first day of
January, two thousand nine, the business activities of a
financial organization having its commercial domicile
in this state are considered to take place entirely in this
state, notwithstanding that the organization may be
"taxable in another state": Provided, however, That for
tax years beginning on or after the first day of January,
two thousand nine, the income from the business
activities of a financial organization that are taxable in
another state shall be apportioned according to the
applicable provisions of this article.

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

(1) Net rents and royalties. —

(A) Net rents and royalties from real property located
in this state are allocable to this state.
(B) Net rents and royalties from tangible personal property are allocable to this state:

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

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

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) Capital gains.

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

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

(i) The property had a situs in this state at the time of
the sale; or

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

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

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

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

(4) Patent and copyright royalties. —

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

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

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

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis
of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

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

(5) Corporate partner's distributive share. —

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

(B) A corporate partner's distributive share of income, gain, loss, deduction or credit of a partnership shall be modified as provided in section six of this article for each partnership. For taxable years beginning on or after the thirty-first day of December, one thousand nine hundred ninety-eight, the distributive share shall then be allocated and apportioned as provided in this section using the partnership's property, payroll and sales factors. The sum of that portion of the distributive share allocated and apportioned to this state shall then be treated as distributive share allocated to this state; and that portion of distributive share allocated or apportioned outside this state shall be treated as
distributive share allocated outside this state, unless the taxpayer requests or the Tax Commissioner, under subsection (h) of this section requires that the distributive share be treated differently.

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

(e) Business activities partially within and partially without this state; apportionment of business income.

— All net income, after deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the denominator of which is four, reduced by the number of factors, if any, having no denominator.

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

(2) Value of property. — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereonto.
and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: Provided, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under rules of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term “net annual rental rate” is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

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

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

(3) Movable property. — The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable
period and the denominator of which is the number of
days of physical location of the property everywhere
during the taxable year. The number of days of physical
location of the property may be determined on a
statistical basis or by other reasonable method
acceptable to the Tax Commissioner.

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

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

(6) Payroll factor. — The payroll factor is a fraction,
the numerator of which is the total compensation paid
in this state during the taxable year by the taxpayer for
compensation and the denominator of which is the total
compensation paid by the taxpayer during the taxable
year, as shown on the taxpayer's federal income tax
return as filed with the Internal Revenue Service, as
reflected in the schedule of wages and salaries and that
(7) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

(8) Employee. — The term "employee" means:

(A) Any officer of a corporation; or

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

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

(A) The employee's service is performed entirely within this state; or

(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within this state. The word "incidental" means any
service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction; or

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

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

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

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

(10) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions
and activity in the regular course of its trade or business during the taxable year (business income) and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120 and consisting of those certain pertinent portions of the (gross income) elements set forth: Provided, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(11) Allocation of sales of tangible personal property.

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

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

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state
and the purchaser is the United States government.

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

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

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

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

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

(13) Financial organizations and other taxpayers with business activities partially within and partially without this state. — Notwithstanding anything contained in this section to the contrary, in the case of financial organizations and other taxpayers, not having their commercial domicile in this state, the rules of this subsection apply to the apportionment of income from their business activities except as expressly otherwise
(f) Income-producing activity. — The term “income-producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income-producing activity” includes, but is not limited to, the following:

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

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

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

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

The mere holding of intangible personal property is not, in itself, an income-producing activity: Provided, that the conduct of the business of a financial organization is an income-producing activity.

(g) Cost of performance. — The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting
principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment.

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

(A) Separate accounting;

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

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

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

(2) Alternative method for public utilities. — If the
taxpayer is a public utility and if the allocation and
apportionment provisions of subsections (d) and (e) of
this section do not fairly represent the taxpayer's
business activities in this state, the taxpayer may
petition for, or the Tax Commissioner may require, as
an alternative to the other methods provided in
subdivision (1) of this subsection, the allocation and
apportionment of the taxpayer's net income in
accordance with any system of accounts prescribed by
the Public Service Commission of this state pursuant to
the provisions of section eight, article two, chapter
twenty-four of this code: Provided, That the allocation
and apportionment provisions of the system of accounts
fairly represent the extent of the taxpayer's business
activities in this state for the purposes of the tax
imposed by this article.

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

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

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

§11-24-7b. Special apportionment rules - financial
organizations.
(a) General. — The Legislature hereby finds that the general formula set forth in section seven of this article for apportioning the business income of corporations taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section seven of this article may not be used to apportion the business income of financial organizations, which shall use only the apportionment formula and methods set forth in this section.

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

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

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

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

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

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

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

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

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

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

(2) “Deposit” means:

(A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable:

Provided, That without limiting the generality of the term “money or its equivalent”, any account or
instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any credit or instrument is primarily or secondarily liable or for a charge against a deposit account or in settlement of checks, drafts or other instruments forwarded to the bank for collection;

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

(C) Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other, including funds held as dealers' reserves or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization, or under condition that the receipt thereof immediately reduces or extinguishes an indebtedness;
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(D) Outstanding drafts, including advice or authorization to charge a financial organization's balance in another organization, cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

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

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

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

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

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

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

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

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

(C) Interest income and other receipts from consumer
loans which are unsecured or are secured by intangible
property that are made to residents of this state,
whether at a place of business, by traveling loan officer,
by mail, by telephone or other electronic means or
(D) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: Provided, That receipts are presumed to be from sources in this state and the presumption may be overcome by reference to factors described in rules to be proposed by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

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

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

(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. In the case of merchants located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;
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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
(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of service is received in this state;

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

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

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

(h) Effective date. — The provisions of this section enacted as chapter one hundred sixty-seven, Acts of the Legislature, one thousand nine hundred ninety-one, shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one. Amendments to this section enacted in the year one thousand nine hundred ninety-six shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five. The amendments to this section, enacted in the year two thousand eight, shall apply to taxable years beginning after the thirty-first day of December, two thousand 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 taxpayer's corporation net income tax liability under this article, for the tax year ending immediately on or before the thirty first day of December, two thousand eight, before application of any surtax, alternative minimum tax or credit allowed, authorized or imposed under this chapter, adjusted by:

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

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

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

7 (3) "Financial organization" means a financial organization as defined in section three-a of this article.
(b) Credit authorized. — A credit shall be allowed against the adjusted primary tax liability of every financial organization under this article, in an amount equal to a portion of the increase in the adjusted primary tax liability of the financial organization under this article for the taxable year, over the amount of the adjusted primary tax liability of the financial organization under this article for the taxable year beginning immediately on or after the first day of January, two thousand eight. The portion of the increase in the adjusted primary tax liability under this article that shall be allowed as a credit under this section is eighty percent for taxable years beginning on or after the first day of January, two thousand nine; sixty percent for taxable years beginning on and after the first day of January, two thousand ten; forty percent for taxable years beginning on and after the first day of January, two thousand eleven; twenty percent for taxable years beginning on and after the first day of January, two thousand twelve; ten percent for taxable years beginning on and after the first day of January, two thousand thirteen; and zero percent for taxable years beginning on and after the first day of January, two thousand fourteen; Provided, That the credit allowed by this section may not be used to reduce the adjusted primary tax liability of any financial organization under this article in any taxable year below one million dollars.


(a) Privilege to file consolidated return. —

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

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

(b) Election binding. —

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

(2) For tax years beginning on and after the first day of January, two thousand nine, the provisions of this subsection are null and void and of no further force or effect.
(c) Consolidated return - financial organizations. —

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

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

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

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

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

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

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

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

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

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

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

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

(e) Method of filing under this article deemed controlling for purposes of other business taxes articles.

Notwithstanding the provisions of section nine-a, article twenty-three of this chapter or any other provision of this code to the contrary, the taxpayer shall file on the same basis under article twenty-three of this chapter as the taxpayer files under this article for the taxable year.
(f) Regulations. — 

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

(g) Computation and payment of tax. — 

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

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

(i) Effective date.

The amendments to this section made by chapter one hundred seventy-nine, Acts of the Legislature in the year one thousand nine hundred ninety, shall apply to all taxable years ending after the eighth day of March, one thousand nine hundred ninety. Amendments to this article enacted by this act in the year one thousand nine hundred ninety-six shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-six, except that financial organizations that are part of an affiliated group may elect, after the effective date of this act, to file a consolidated return prepared in accordance with the provisions of this section, as amended, and subject to applicable statutes of limitation, for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, but before the first day of January, one thousand nine hundred ninety-six, notwithstanding provisions then in effect prohibiting out-of-state financial organizations from filing consolidated returns for those years: Provided, That when the statute of limitation on filing an amended return for any of those years expires before the first day

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

(j) Combined reporting required. —

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

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

(1) The Tax Commissioner may require the combined report to include the income and associated apportionment factors of any persons that are not included pursuant to subsection (j) of this section, but 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
individual net business incomes of all members of the
combined group. A member's net business income is
determined by removing all but business income,
expense and loss from that member's total income, as
provided in this section and section thirteen-d of this
article.

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

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

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

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

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

(D) Its income sourced to this state from the sale or
exchange of capital or assets, and from involuntary
conversions, as determined under subsection (g), section
thirteen-d of this article;
(E) Its nonbusiness income or loss allocable to this state, determined under the provisions for allocation of nonbusiness income set forth in this article;

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

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

(2) Except where otherwise provided, no tax credit or post-apportionment deduction earned by one member of the group, but not fully used by or allowed to that member, may be used, in whole or in part, by another member of the group or applied, in whole or in part, against the total income of the combined group; and a
post-apportionment deduction carried over into a subsequent year as to the member that incurred it, and available as a deduction to that member in a subsequent year, will be considered in the computation of the income of that member in the subsequent year regardless of the composition of that income as apportioned, allocated or wholly within this state: Provided, That unused and unexpired economic development tax credits that were earned during a tax year in which the taxpayer filed a consolidated return under this article may, if otherwise allowed within the statutory limitations applicable to the tax credit, be used, in whole or in part, against taxes imposed by this article on any member of the taxpayer's combined group to the extent the credits would have been allowed had the taxpayer continued to file a consolidated return. For purposes of this section the term "economic development tax credit" means, and is limited to, a tax credit asserted on a tax return under article thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-q, thirteen-r or thirteen-s of this chapter or under article one, chapter five-e of this code.

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

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

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

(2) The taxpayer member's apportionment percentage,
determined in accordance with this article, including in
the property, payroll and sales factor numerators the
taxpayer's property, payroll and sales, respectively,
associated with the combined group's unitary business
in this state and including in the denominator the
property, payroll and sales of all members of the
combined group, including the taxpayer, which
property, payroll and sales are associated with the
combined group's unitary business wherever located.

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

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

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

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

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

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

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

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

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

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

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

36 (D) Except as otherwise provided by regulation, the profit and loss statement of each member of the combined group, and the apportionment factors related thereto, whether United States or foreign, shall be
translated into the currency in which the parent company maintains its books and records.

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

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

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

(d) All dividends paid by one to another of the members of the combined group shall, to the extent those dividends are paid out of the earnings and profits of the unitary business included in the combined report,
in the current or an earlier year, be eliminated from the income of the recipient. Except as otherwise provided, this provision shall not apply to dividends received from members of the unitary business which are not a part of the combined group. Except when specifically required by the Tax Commissioner to be included, all dividends paid by an insurance company directly or indirectly to a corporation that is part of a unitary business with the insurance company shall be deducted or eliminated from the income of the recipient of the dividend.

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

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

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

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

(C) Converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or
(2) The buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary.

(f) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Internal Revenue Code Section 170, be subtracted first from the business income of the combined group, subject to the income limitations of that section applied to the entire business income of the group and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense, subject to the income limitations of that section applied to the nonbusiness income of that specific member. Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

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

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

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

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

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

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

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

(a) *Water's-edge reporting.* —

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

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

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

(3) The entire income and apportionment factors of
any member which is a domestic international sales
corporation as described in Internal Revenue Code
Sections 991 to 994, inclusive; a foreign sales
corporation as described in Internal Revenue Code
Sections 921 to 927, inclusive; or any member which is
an export trade corporation, as described in Internal
Revenue Code Sections 970 to 971, inclusive;

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

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

(6) Any member that earns more than twenty percent
of its income, directly or indirectly, from intangible
property or service-related activities that are deductible
against the business income of other members of the
water's-edge group, to the extent of that income and the
apportionment factors related thereto; and

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

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

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

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

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within=special=s session of this
the 51st Day of March, 2008.

[Signature]
Governor