

SB 540

FILED

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2009**

WEST VIRGINIA  
SECRETARY OF STATE



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**Senate Bill No. 540**

(SENATORS HELMICK AND McCABE, *original sponsors*)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §11-6I-3 and §11-6I-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-10-5e of said code; to amend said code by adding thereto a new section, designated §11-10-25; to amend and reenact §11-13Q-22 of said code; to amend and reenact §11-15-3c of said code; to amend said code by adding thereto a new section, designated §11-15-9m; to amend and reenact §11-21-21, §11-21-22 and §11-21-23 of said code; to amend and reenact §11-24-3a and §11-24-4b of said code; to amend and reenact §18-9A-2a of said code; and to amend and reenact §21A-6-1c of said code, all relating to taxation; specifying authority of the Tax Commissioner to designate Tax Division documents that may be sent by personal service, United States postal service, regular mail, certified mail or registered mail or

other means; specifying statutory burden of proof and presumption against tax exemptions; specifying inflation adjustment for certain economic opportunity tax credit entitlement requirements; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from state consumers sales and use tax on certain vehicles; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from municipal and local consumers sales and service tax and use tax, or special downtown redevelopment district excise tax, or special district excise tax and other sales taxes; authorizing discretionary designation of per se exemptions from the consumers sales and service tax and use tax by the Tax Commissioner; specifying exclusion of federal alternative minimum income taxpayers from eligibility for property tax payment deferment and assessor's denial of deferment; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the senior citizens' tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the low-income family tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the refundable tax credit for real property taxes paid in excess of four percent of income; defining terms; specifying treatment of certain income and deduction items for certain regulated investment companies and real estate investment companies; delaying the effective date of alternative definition of levies for general current expenses purposes; authorizing state income tax withholding from the individual's payment of unemployment compensation; specifying

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

That §11-6I-3 and §11-6I-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-10-5e of

said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-10-25; that §11-13Q-22 of said code be amended and reenacted; that §11-15-3c of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9m; that §11-21-21, §11-21-22 and §11-21-23 of said code be amended and reenacted; that §11-24-3a and §11-24-4b of said code be amended and reenacted; that §18-9A-2a of said code be amended and reenacted; and that §21A-6-1c of said code be amended and reenacted, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 6I. SENIOR CITIZEN PROPERTY TAX PAYMENT DEFERMENT ACT.**

#### **§11-6I-3. Property tax payment deferment.**

1 (a) The following homesteads shall qualify for the  
2 deferment provided in subsection (c) of this section:

3 (1) Any homestead owned by an owner sixty-five years  
4 of age or older and used and occupied exclusively for  
5 residential purposes by the owner; and

6 (2) Any homestead that:

7 (A) Is owned by an owner sixty-five years of age or  
8 older who, as a result of illness, accident or infirmity, is  
9 residing with a family member or is a resident of a nursing  
10 home, personal care home, rehabilitation center or similar  
11 facility;

12 (B) Was most recently used and occupied exclusively for  
13 residential purposes by the owner or the owner's spouse;  
14 and

15 (C) Has been retained by the owner for noncommercial  
16 purposes.

17 (b) A homestead which is owned, in whole or in part, by  
18 any person who is required to pay the federal alternative  
19 minimum income tax in the current tax year is disquali-  
20 fied from the deferment provided in this article.

21 (c) (1) For tax years commencing on or after January 1,  
22 2009, the owner of a homestead meeting the qualifications  
23 set forth in subsection (a) of this section may apply for a  
24 deferment in the payment of the tax increment of ad  
25 valorem taxes assessed under the authority of article three  
26 of this chapter on the homestead: *Provided*, That the  
27 deferment may be authorized only when the tax increment  
28 is the greater of \$300 or ten percent or more: *Provided*,  
29 *however*, That all deferred taxes are not subject to any  
30 rate of interest.

31 (2) In lieu of the deferment of the tax increment autho-  
32 rized pursuant to this article, a taxpayer entitled to the  
33 deferment may elect to instead apply the senior citizen  
34 property tax relief credit authorized under section twenty-  
35 four, article twenty-one of this chapter. Any taxpayer  
36 making such election shall be fully subject to the terms  
37 and limitations set forth in section twenty-four, article  
38 twenty-one of this chapter.

**§11-6I-5. Determination; notice of denial of application for  
deferment.**

1 (a) The assessor shall, as soon as practicable after an  
2 application for deferment is filed, review that application  
3 and either approve or deny it. The assessor shall approve  
4 or disapprove an application for deferment within thirty  
5 days of receipt. Any application not approved or denied  
6 within thirty days is deemed approved. If the application  
7 is denied, the assessor shall promptly, but not later than  
8 January 1, serve the owner with written notice explaining  
9 why the application was denied and furnish a form for  
10 filing with the county commission, should the owner desire  
11 to take an appeal. The notice required or authorized by

12 this section shall be served on the owner or his or her  
13 authorized representative either by personal service or by  
14 certified mail.

15 (b) In the event that the assessor has information  
16 sufficient to form a reasonable belief that an owner, after  
17 having been originally granted a deferment, is no longer  
18 eligible for the deferment, he or she shall, within thirty  
19 days after forming this reasonable belief, revoke the  
20 deferment and serve the owner with written notice ex-  
21 plaining the reasons for the revocation and furnish a form  
22 for filing with the county commission should the owner  
23 desire to take an appeal.

24 (c) The assessor shall deny any application made by or  
25 for an owner who is required to pay the federal alternative  
26 minimum income tax in the current tax year. The applica-  
27 tion may contain an affirmation, prescribed by the Tax  
28 Commissioner, whereby the applicant shall indicate  
29 whether the applicant is required to pay the federal  
30 alternative minimum income tax in the current tax year.  
31 Failure to truthfully indicate whether the applicant is  
32 required to pay the federal alternative minimum income  
33 tax in the current tax year shall be subject to the applica-  
34 ble penalties of articles nine and ten of this chapter.

**ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.**

**§11-10-5e. Service of notice.**

1 Notwithstanding any other provision of this code, the  
2 Tax Commissioner may designate those assessments,  
3 notices, statements of account or other Tax Division  
4 documents which shall be sent by personal service or  
5 United States Postal Service regular mail, or certified mail  
6 or registered mail or by any other means at the discretion  
7 of the Tax Commissioner, pursuant to any provision of this  
8 chapter. Any service of notice addressed by United States  
9 Postal Service regular mail is presumed to be accepted

10 upon mailing unless proven otherwise by the taxpayer.  
11 Any service of notice by certified mail shall be valid if  
12 accepted by the taxpayer or if addressed to and mailed to  
13 the taxpayer's usual place of business or usual place of  
14 abode or last known address and accepted by any officer,  
15 partner, employee, spouse or child of the taxpayer over the  
16 age of eighteen. Any notice addressed and mailed in the  
17 above manner and accepted by any person shall be pre-  
18 sumed to be accepted by such person unless proven  
19 otherwise by the taxpayer.

**§11-10-25. Taxpayer must show tax exemption applies; pre-  
sumption.**

1 (a) The burden of proving that a tax exemption applies  
2 to any tax administered by the Tax Commissioner shall be  
3 upon the taxpayer. Tax exemptions administered by the  
4 Tax Commissioner shall be strictly construed against the  
5 taxpayer and for the payment of any applicable tax.

6 (b) To prevent evasion, it is presumed that a tax exemp-  
7 tion does not apply until the contrary is clearly established  
8 by a preponderance of the evidence.

**ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

**§11-13Q-22. Credit available for taxpayers which do not sat-  
isfy the new jobs percentage requirement.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, a taxpayer engaged in one or more of the indus-  
3 tries or business activities specified in section nineteen of  
4 this article which does not satisfy the new jobs percentage  
5 requirement prescribed in subsection (c), section nine of  
6 this article or, if the taxpayer is a small business as  
7 defined in section ten of this article, does not create at  
8 least ten new jobs within twelve months after placing  
9 qualified investment into service as required by section ten  
10 of this article, but which otherwise fulfills the require-

11 ments prescribed in this article, is permitted to claim a  
12 credit against the taxes specified in section seven of this  
13 article in the order so specified that are attributable to and  
14 the consequence of the taxpayer's business operations in  
15 this state which result in the creation of net new jobs.  
16 Credit under this section is allowed in the amount of  
17 \$3,000 per year, per new job created and filled by a new  
18 employee, as those terms are defined in section three of  
19 this article for a period of five consecutive years beginning  
20 in the tax year when the new employee is first hired. In no  
21 case may the number of new employees determined for  
22 purposes of this section exceed the total net increase in the  
23 taxpayer's employment in this state. Credit allowed under  
24 this section shall be allowed beginning in the tax year  
25 when the new employee is first hired: *Provided*, That each  
26 new job:

27 (1) Pays at least \$32,000 annually. Beginning January  
28 1, 2010, and on January 1 of each year thereafter, the  
29 commissioner shall prescribe an amount that shall apply  
30 in lieu of the \$32,000 amount during that calendar year.  
31 This amount is prescribed by increasing the \$32,000 figure  
32 by the cost-of-living adjustment for that calendar year;

33 (2) Provides health insurance and may offer benefits  
34 including child care, retirement or other benefits; and

35 (3) Is a full-time, permanent position, as those terms are  
36 defined in section three of this article.

37 Jobs that pay less than \$32,000 annually, or less than  
38 the amount prescribed by the commissioner pursuant to  
39 subdivision (1) of this subsection, whichever is higher, or  
40 that pay that salary but do not also provide benefits in  
41 addition to the salary do not qualify for the credit autho-  
42 rized by this section. Jobs that are less than full-time,  
43 permanent positions do not qualify for the credit autho-  
44 rized by this section.

45 The employer having obtained entitlement to the credit  
46 shall not be required to raise wages of employees currently  
47 employed in jobs upon which the initial credit was based  
48 by reason of the cost of living adjustment.

49 (b) For purposes of this section, the following defini-  
50 tions apply:

51 (1) *Cost-of-living adjustment.* – For purposes of  
52 subsection (a) of this section, the cost-of-living adjustment  
53 for any calendar year is the percentage (if any) by which  
54 the consumer price index for the preceding calendar year  
55 exceeds the consumer price index for the calendar year  
56 2009.

57 (2) *Consumer price index for any calendar year.* – For  
58 purposes of subdivision (1) of this subsection, the con-  
59 sumer price index for any calendar year is the average of  
60 the federal consumer price index as of the close of the  
61 twelve-month period ending on August 31 of that calendar  
62 year.

63 (3) *Consumer price index.* – For purposes of subdivi-  
64 sion (2) of this subsection, the term “federal consumer  
65 price index” means the most recent consumer price index  
66 for all urban consumers published by the United States  
67 Department of Labor.

68 (4) *Rounding.* – If any increase under subdivision (1) of  
69 this subsection is not a multiple of \$50, the increase shall  
70 be rounded to the next lowest multiple of \$50.

71 (c) Unused credit remaining in any tax year after  
72 application against the taxes specified in section seven of  
73 this article is forfeited and does not carry forward to any  
74 succeeding tax year and does not carry back to a prior tax  
75 year.

76 (d) The tax credit authorized by this section may be  
77 taken in addition to any credits allowable under article

78 thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g,  
79 thirteen-j, thirteen-r or thirteen-s of this chapter.

80 (e) *Reduction in number of employees credit forfeiture.*  
81 –If, during the year when a new job was created for which  
82 credit was granted under this section or during any of the  
83 next succeeding four tax years thereafter, net jobs that are  
84 attributable to and the consequence of the taxpayer's  
85 business operations in this state decrease, counting both  
86 new jobs for which credit was granted under this section  
87 and preexisting jobs, then the total amount of credit to  
88 which the taxpayer is entitled under this section shall be  
89 decreased and forfeited in the amount of \$3,000 for each  
90 net job lost.

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.**

1 (a) Notwithstanding any provision of this article or  
2 article fifteen-a of this chapter to the contrary, beginning  
3 on July 1, 2008, all motor vehicle sales to West Virginia  
4 residents shall be subject to the consumers sales tax  
5 imposed by this article.

6 (b) *Rate of tax on motor vehicles.* – Notwithstanding  
7 any provision of this article or article fifteen-a of this  
8 chapter to the contrary, the rate of tax on the sale and use  
9 of a motor vehicle shall be five percent of its sale price, as  
10 defined in section two, article fifteen-b of this chapter:  
11 *Provided,* That so much of the sale price or consideration  
12 as is represented by the exchange of other vehicles on  
13 which the tax imposed by this section or section four,  
14 article three, chapter seventeen-a of this code has been

15 paid by the purchaser shall be deducted from the total  
16 actual sale price paid for the motor vehicle, whether the  
17 motor vehicle be new or used.

18 (c) *Motor vehicles purchased out of state.* – Notwith-  
19 standing this article or article fifteen-a to the contrary, the  
20 tax imposed by this section shall apply to all motor  
21 vehicles, used as defined by section one, article fifteen-a of  
22 this chapter, within this state, regardless of whether the  
23 vehicle was purchased in a state other than West Virginia.

24 (d) *Definition of sale.* – Notwithstanding any provision  
25 of this article or article fifteen-a of this chapter to the  
26 contrary, for purposes of this section, “sale”, “sales” or  
27 “selling” means any transfer or lease of the possession or  
28 ownership of a motor vehicle for consideration, including  
29 isolated transactions between individuals not being made  
30 in the ordinary course of repeated and successive business  
31 and also including casual and occasional sales between  
32 individuals not conducted in a repeated manner or in the  
33 ordinary course of repetitive and successive transactions.

34 (e) *Definition of motor vehicle.* – For purposes of this  
35 section, “motor vehicle” means every propellable device in  
36 or upon which any person or property is or may be trans-  
37 ported or drawn upon a highway including, but not  
38 limited to: Automobiles; buses; motor homes; motorcycles;  
39 motorboats; all-terrain vehicles; snowmobiles; low-speed  
40 vehicles; trucks, truck tractors and road tractors having a  
41 weight of less than fifty-five thousand pounds; trailers,  
42 semitrailers, full trailers, pole trailers and converter gear  
43 having a gross weight of less than two thousand pounds;  
44 and motorboat trailers, fold-down camping trailers,  
45 traveling trailers, house trailers and motor homes; except  
46 that the term “motor vehicle” does not include: Modular  
47 homes, manufactured homes, mobile homes, similar  
48 nonmotive propelled vehicles susceptible of being moved  
49 upon the highways but primarily designed for habitation

50 and occupancy; devices operated regularly for the trans-  
51 portation of persons for compensation under a certificate  
52 of convenience and necessity or contract carrier permit  
53 issued by the Public Service Commission; mobile equip-  
54 ment as defined in section one, article one, chapter  
55 seventeen-a of this code; special mobile equipment as  
56 defined in section one, article one, chapter seventeen-a of  
57 this code; trucks, truck tractors and road tractors having  
58 a gross weight of fifty-five thousand pounds or more;  
59 trailers, semitrailers, full trailers, pole trailers and con-  
60 verter gear having weight of two thousand pounds or  
61 greater: *Provided*, That notwithstanding the provisions of  
62 section nine, article fifteen, chapter eleven of this code, the  
63 exemption from tax under this section for mobile equip-  
64 ment as defined in section one, article one, chapter  
65 seventeen-a of this code; special mobile equipment defined  
66 in section one, article one, chapter seventeen-a of this  
67 code; Class B trucks, truck tractors and road tractors  
68 registered at a gross weight of fifty-five thousand pounds  
69 or more; and Class C trailers, semitrailers, full trailers,  
70 pole trailers and converter gear having weight of two  
71 thousand pounds or greater does not subject the sale or  
72 purchase of the vehicle to the consumer sales and service  
73 tax imposed by section three of this article.

74 (f) *Exemptions.* – Notwithstanding any other provision  
75 of this code to the contrary, the tax imposed by this  
76 section shall not be subject to any exemption in this code  
77 other than the following:

78 (1) The tax imposed by this section does not apply to  
79 any passenger vehicle offered for rent in the normal course  
80 of business by a daily passenger rental car business as  
81 licensed under the provisions of article six-d, chapter  
82 seventeen-a of this code. For purposes of this section, a  
83 daily passenger car means a motor vehicle having a gross  
84 weight of eight thousand pounds or less and is registered  
85 in this state or any other state. In lieu of the tax imposed

86 by this section, there is hereby imposed a tax of not less  
87 than \$1 nor more than \$1.50 for each day or part of the  
88 rental period. The Commissioner of Motor Vehicles shall  
89 propose an emergency rule in accordance with the provi-  
90 sions of article three, chapter twenty-nine-a of this code to  
91 establish this tax.

92 (2) The tax imposed by this section does not apply  
93 where the motor vehicle has been acquired by a corpora-  
94 tion, partnership or limited liability company from  
95 another corporation, partnership or limited liability  
96 company that is a member of the same controlled group  
97 and the entity transferring the motor vehicle has previ-  
98 ously paid the tax on that motor vehicle imposed by this  
99 section. For the purposes of this section, control means  
100 ownership, directly or indirectly, of stock or equity  
101 interests possessing fifty percent or more of the total  
102 combined voting power of all classes of the stock of a  
103 corporation or equity interests of a partnership or limited  
104 liability company entitled to vote or ownership, directly or  
105 indirectly, of stock or equity interests possessing fifty  
106 percent or more of the value of the corporation, partner-  
107 ship or limited liability company.

108 (3) The tax imposed by this section does not apply  
109 where motor vehicle has been acquired by a senior citizen  
110 service organization which is exempt from the payment of  
111 income taxes under the United States Internal Revenue  
112 Code, Title 26 U. S. C. §501(c)(3) and which is recognized  
113 to be a bona fide senior citizen service organization by the  
114 Bureau of Senior Services existing under the provisions of  
115 article five, chapter sixteen of this code.

116 (4) The tax imposed by this section does not apply to  
117 any active duty military personnel stationed outside of  
118 West Virginia who acquires a motor vehicle by sale within  
119 nine months from the date the person returns to this state.

120 (5) The tax imposed by this section does not apply to  
121 motor vehicles acquired by registered dealers of this state  
122 for resale only.

123 (6) The tax imposed by this section does not apply to  
124 motor vehicles acquired by this state or any political  
125 subdivision thereof or by any volunteer fire department or  
126 duly chartered rescue or ambulance squad organized and  
127 incorporated under the laws of this state as a nonprofit  
128 corporation for protection of life or property.

129 (7) The tax imposed by this section does not apply to  
130 motor vehicles acquired by an urban mass transit author-  
131 ity, as defined in article twenty-seven, chapter eight of this  
132 code, or a nonprofit entity exempt from federal and state  
133 income tax under the Internal Revenue Code for the  
134 purpose of providing mass transportation to the public at  
135 large or designed for the transportation of persons and  
136 being operated for the transportation of persons in the  
137 public interest.

138 (8) The tax imposed by this section does not apply to the  
139 registration of a vehicle owned and titled in the name of a  
140 resident of this state if the applicant:

141 (A) Was not a resident of this state at the time the  
142 applicant purchased or otherwise acquired ownership of  
143 the vehicle;

144 (B) Presents evidence as the Commissioner of Motor  
145 Vehicles may require of having titled the vehicle in the  
146 applicant's previous state of residence;

147 (C) Has relocated to this state and can present such  
148 evidence as the Commissioner of Motor Vehicles may  
149 require to show bona fide residency in this state; and

150 (D) Makes application to the Division of Motor Vehicles  
151 for a title and registration and pays all other fees required

152 by chapter seventeen-a of this code within thirty days of  
153 establishing residency in this state as prescribed in  
154 subsection (a), section one-a of this article.

155 (9) On and after January 1, 2009, the tax imposed by  
156 this section does not apply to Class B trucks, truck tractors  
157 and road tractors registered at a gross weight of fifty-five  
158 thousand pounds or more or to Class C trailers,  
159 semitrailers, full trailers, pole trailers and converter gear  
160 having a weight of two thousand pounds or greater. If an  
161 owner of a vehicle has previously titled the vehicle at a  
162 declared gross weight of fifty-five thousand pounds or  
163 more and the title was issued without the payment of the  
164 tax imposed by this section, then before the owner may  
165 obtain registration for the vehicle at a gross weight less  
166 than fifty-five thousand pounds, the owner shall surrender  
167 to the commissioner the exempted registration, the  
168 exempted certificate of title and pay the tax imposed by  
169 this section based upon the current market value of the  
170 vehicle.

171 (10) The tax imposed by this section does not apply to  
172 vehicles leased by residents of West Virginia. On or after  
173 January 1, 2009, a tax is imposed upon the monthly  
174 payments for the lease of any motor vehicle leased under  
175 a written contract of lease by a resident of West Virginia  
176 for a contractually specified continuous period of more  
177 than thirty days, which tax is equal to five percent of the  
178 amount of the monthly payment, applied to each payment,  
179 and continuing for the entire term of the initial lease  
180 period. The tax shall be remitted to the Division of Motor  
181 Vehicles on a monthly basis by the lessor of the vehicle.  
182 Leases of thirty days or less are taxable under the provi-  
183 sions of this article and article fifteen-a of this chapter  
184 without reference to this section.

185 (g) *Division of Motor Vehicles to collect.*— Notwith-  
186 standing any provision of this article, article fifteen-a and

187 article ten of this chapter to the contrary, the Division of  
188 Motor Vehicles shall collect the tax imposed by this  
189 section: *Provided*, That such tax is imposed upon the  
190 monthly payments for the lease of any motor vehicle  
191 leased by a resident of West Virginia, which tax is equal to  
192 five percent of the amount of the monthly payment,  
193 applied to each payment, and continuing for the entire  
194 term of the initial lease period. The tax shall be remitted  
195 to the Division of Motor Vehicles on a monthly basis by  
196 the lessor of the vehicle.

197 (h) *Dedication of tax to highways.* – Notwithstanding  
198 any provision of this article or article fifteen-a of this  
199 chapter to the contrary, all taxes collected pursuant to this  
200 section, after deducting the amount of any refunds law-  
201 fully paid, shall be deposited in the State Road Fund in the  
202 State Treasury and expended by the Commissioner of  
203 Highways for design, maintenance and construction of  
204 roads in the state highway system.

205 (i) *Legislative rules; emergency rules.* – Notwithstand-  
206 ing any provision of this article, article fifteen-a and  
207 article ten of this chapter to the contrary, the Commis-  
208 sioner of Motor Vehicles shall promulgate legislative rules  
209 explaining and implementing this section, which rules  
210 shall be promulgated in accordance with the provisions of  
211 article three, chapter twenty-nine-a of this code and  
212 should include a minimum taxable value and set forth  
213 instances when a vehicle is to be taxed at fair market  
214 value rather than its purchase price. The authority to  
215 promulgate rules includes authority to amend or repeal  
216 those rules. If proposed legislative rules for this section  
217 are filed in the State Register before June 15, 2008, those  
218 rules may be promulgated as emergency legislative rules  
219 as provided in article three, chapter twenty-nine-a of this  
220 code.

221 (j) Notwithstanding any other provision of this code,  
222 effective January 1, 2009, no municipal sales or use tax or  
223 local sales or use tax or special downtown redevelopment  
224 district excise tax or special district excise tax shall be  
225 imposed under article twenty-two, chapter seven of this  
226 code or article thirteen, chapter eight of this code or  
227 article thirteen-b of said chapter or article thirty-eight of  
228 said chapter or any other provision of this code, except  
229 this section, on sales of motor vehicles as defined in this  
230 article or on any tangible personal property excepted or  
231 exempted from tax under this section. Nothing in this  
232 subsection shall be construed to prevent the application of  
233 the municipal business and occupation tax on motor  
234 vehicle retailers and leasing companies.

**§11-15-9m. Discretionary designation of per se exemptions.**

1 Notwithstanding any other provision of this code, the  
2 Tax Commissioner may, by rule, specify those exemptions  
3 authorized in this article or in other provisions of this code  
4 or applicable federal law for which exemption certificates  
5 or direct pay permits are not required.

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-21. Senior citizens' tax credit for property tax paid on  
first \$10,000 of taxable assessed value of a home-  
stead in this state; tax credit for property tax  
paid on the first \$20,000 of value for property tax  
years after December 31, 2006.**

1 (a) *Allowance of credit.* –

2 (1) A low-income person who is allowed a \$20,000  
3 homestead exemption from the assessed value of his or her  
4 homestead for ad valorem property tax purposes, as  
5 provided in section three, article six-b of this chapter,  
6 shall be allowed a refundable credit against the taxes  
7 imposed by this article equal to the amount of ad valorem

8 property taxes paid on up to the first \$10,000 of taxable  
9 assessed value of the homestead for property tax years  
10 that begin on or after January 1, 2003, except as provided  
11 in subdivision (2) of this subsection.

12 (2) For tax years beginning on or after January 1, 2007,  
13 a low-income person who is allowed a \$20,000 homestead  
14 exemption from the assessed value of his or her homestead  
15 for ad valorem property tax purposes, as provided in  
16 section three, article six-b of this chapter, shall be allowed  
17 a refundable credit against the taxes imposed by this  
18 article equal to the amount of ad valorem property taxes  
19 paid on up to the first \$20,000 of taxable assessed value of  
20 the homestead for property tax years that begin on or after  
21 January 1, 2007: *Provided*, That for tax years beginning on  
22 and after January 1, 2009, any person who is required to  
23 pay the federal alternative minimum income tax in the  
24 current tax year is disqualified from receiving any tax  
25 credit provided under this section.

26 (3) Due to the administrative cost of processing, the  
27 refundable credit authorized by this section may not be  
28 refunded if less than \$10.

29 (4) The credit for each property tax year shall be  
30 claimed by filing a claim for refund within three years  
31 after the due date for the personal income tax return upon  
32 which the credit is first available.

33 (b) *Terms defined.* –

34 For purposes of this section:

35 (1) “Low income” means federal adjusted gross income  
36 for the taxable year that is one hundred fifty percent or  
37 less of the federal poverty guideline for the year in which  
38 property tax was paid, based upon the number of individ-  
39 uals in the family unit residing in the homestead, as

40 determined annually by the United States Secretary of  
41 Health and Human Services.

42 (2) (A) For tax years beginning before January 1, 2007,  
43 "taxes paid" means the aggregate of regular levies, excess  
44 levies and bond levies extended against not more than  
45 \$10,000 of the taxable assessed value of a homestead that  
46 are paid during the calendar year determined after  
47 application of any discount for early payment of taxes but  
48 before application of any penalty or interest for late  
49 payment of property taxes for a property tax year that  
50 begins on or after January 1, 2003, except as provided in  
51 paragraph (B) of this subdivision.

52 (B) For tax years beginning on or after January 1, 2007,  
53 "taxes paid" means the aggregate of regular levies, excess  
54 levies and bond levies extended against not more than  
55 \$20,000 of the taxable assessed value of a homestead that  
56 are paid during the calendar year determined after  
57 application of any discount for early payment of taxes but  
58 before application of any penalty or interest for late  
59 payment of property taxes for a property tax year that  
60 begins on or after January 1, 2007.

61 (c) *Legislative rule.* –

62 The Tax Commissioner shall propose a legislative rule  
63 for promulgation as provided in article three, chapter  
64 twenty-nine-a of this code to explain and implement this  
65 section.

66 (d) *Confidentiality.* –

67 The Tax Commissioner shall utilize property tax  
68 information in the statewide electronic data processing  
69 system network to the extent necessary for the purpose of  
70 administering this section, notwithstanding any provision  
71 of this code to the contrary.

**§11-21-22. Low-income family tax credit.**

1 In order to eliminate West Virginia personal income tax  
2 on families with incomes below the federal poverty  
3 guidelines and to reduce the West Virginia personal  
4 income tax on families with incomes that are immediately  
5 above the federal poverty guidelines, there is hereby  
6 created a nonrefundable tax credit, to be known as the  
7 low-income family tax credit, against the West Virginia  
8 personal income tax. The low-income family tax credit is  
9 based upon family size and the federal poverty guidelines.  
10 The low-income tax credit reduces the tax imposed by the  
11 provisions of this article on families with modified federal  
12 adjusted gross income below or near the federal poverty  
13 guidelines: *Provided*, That for tax years beginning on and  
14 after January 1, 2009, any person who is required to pay  
15 the federal alternative minimum income tax in the current  
16 tax year is disqualified from receiving any tax credit  
17 provided under this section.

**§11-21-23. Refundable credit for real property taxes paid in  
excess of four percent of income.**

- 1 (a) For the tax years beginning on or after January 1,  
2 2008, any homeowner living in his or her homestead shall  
3 be allowed a refundable credit against the taxes imposed  
4 by this article equal to the amount of real property taxes  
5 paid in excess of four percent of their income. If the  
6 refundable credit provided in this section exceeds the  
7 amount of taxes imposed by this article, the state Depart-  
8 ment of Revenue shall refund that amount to the home-  
9 owner.
- 10 (b) Due to the administrative cost of processing, the  
11 refundable credit authorized by this section may not be  
12 refunded if less than \$10.

13 (c) The credit for each property tax year shall be  
14 claimed by filing a claim for refund within twelve months  
15 after the real property taxes are paid on the homestead.

16 (d) For the purposes of this section:

17 (1) "Gross household income" is defined as federal  
18 adjusted gross income plus the sum of the following:

19 (A) Modifications in subsection (b), section twelve of  
20 this article increasing federal adjusted gross income;

21 (B) Federal tax-exempt interest reported on federal tax  
22 return;

23 (C) Workers' compensation and loss of earnings insur-  
24 ance; and

25 (D) Nontaxable Social Security benefits; and

26 (2) For the tax years beginning before January 1, 2008,  
27 "real property taxes paid" means the aggregate of regular  
28 levies, excess levies and bond levies extended against the  
29 homestead that are paid during the calendar year and  
30 determined after any application of any discount for early  
31 payment of taxes but before application of any penalty or  
32 interest for late payment of property taxes for property  
33 tax years that begin on or after January 1, 2008.

34 (e) A homeowner is eligible to benefit from this section  
35 or section twenty-one of this article, whichever section  
36 provides the most benefit as determined by the home-  
37 owner. No homeowner may receive benefits under both  
38 this section and section twenty-one of this article during  
39 the same taxable year. For tax years beginning on and  
40 after January 1, 2009, any person who is required to pay  
41 the federal alternative minimum income tax in the current  
42 tax year is disqualified from receiving any tax credit  
43 provided under this section. Nothing in this section denies

44 those entitled to the homestead exemption provided in  
45 section three, article six-b of this chapter.

46 (f) No homeowner may receive a refundable tax credit  
47 imposed by this article in excess of \$1,000. This amount  
48 shall be reviewed annually by the Legislature to determine  
49 if an adjustment is necessary.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-3a. Specific terms defined.**

1 (a) For purposes of this article:

2 (1) *Aggregate effective rate of tax.*— The term “aggre-  
3 gate effective rate of tax” shall mean the sum of the  
4 effective rates of tax imposed by a state or United States  
5 possession or any combination thereof on a related  
6 member.

7 (2) *Business income.*— The term “business income”  
8 means income arising from transactions and activity in the  
9 regular course of the taxpayer’s trade or business and  
10 includes income from tangible and intangible property if  
11 the acquisition, management and disposition of the  
12 property or the rendering of services in connection there-  
13 with constitute integral parts of the taxpayer’s regular  
14 trade or business operations and includes all income which  
15 is apportionable under the Constitution of the United  
16 States.

17 (3) *Captive real estate investment trust.* — The term  
18 “captive real estate investment trust” shall mean a real  
19 estate investment trust, the shares or beneficial interests  
20 of which:

21 (A) Are not regularly traded on an established securities  
22 market and:

23 (B) Are more than fifty percent of the voting power or  
24 value of the beneficial interests or shares of which are

25 owned or controlled, directly or indirectly or construc-  
26 tively, by a single entity that is:

27 (i) Treated as an association taxable as a corporation  
28 under the Internal Revenue Code of 1986, as amended; and

29 (ii) Not exempt from federal income tax pursuant to the  
30 provisions of Section 501(a) of the Internal Revenue Code  
31 of 1986, as amended:

32 (C) For purposes of applying subparagraph (i), para-  
33 graph (B) of this subdivision, the following entities are not  
34 considered an association taxable as a corporation:

35 (i) Any real estate investment trust as defined in Section  
36 856 of the Internal Revenue Code of 1986, as amended,  
37 other than a "captive real estate investment trust";

38 (ii) Any qualified real estate investment trust subsidiary  
39 under Section 856(i) of the Internal Revenue Code of 1986,  
40 as amended, other than a qualified real estate investment  
41 trust subsidiary of a "captive real estate investment trust";

42 (iii) Any listed Australian property trust, meaning an  
43 Australian unit trust registered as a "managed investment  
44 scheme" under the Australian Corporations Act in which  
45 the principal class of units is listed on a recognized stock  
46 exchange in Australia and is regularly traded on an  
47 established securities market, or an entity organized as a  
48 trust, provided that a listed Australian property trust  
49 owns or controls, directly or indirectly, seventy-five  
50 percent or more of the voting power or value of the  
51 beneficial interests or shares of the trust; or

52 (iv) Any qualified foreign entity, meaning a corpora-  
53 tion, trust, association or partnership organized outside  
54 the laws of the United States and which satisfies the  
55 following criteria:

56 (1) At least seventy-five percent of the entity's total  
57 asset value at the close of its taxable year is represented by  
58 real estate assets as defined in Section 856(c)(5)(B) of the  
59 Internal Revenue Code of 1986, as amended, thereby  
60 including shares or certificates of beneficial interest in any  
61 real estate investment trust, cash and cash equivalents and  
62 United States Government securities;

63 (2) The entity is not subject to tax on amounts distrib-  
64 uted to its beneficial owners or is exempt from entity-level  
65 taxation;

66 (3) The entity distributes at least eighty-five percent of  
67 its taxable income as computed in the jurisdiction in  
68 which it is organized to the holders of its shares or certifi-  
69 cates of beneficial interest on an annual basis;

70 (4) Not more than ten percent of the voting power or  
71 value in the entity is held directly or indirectly or con-  
72 structively by a single entity or individual or the shares or  
73 beneficial interests of the entity are regularly traded on an  
74 established securities market; and

75 (5) The entity is organized in a country which has a tax  
76 treaty with the United States.

77 (D) A real estate investment trust that is intended to be  
78 regularly traded on an established securities market, and  
79 that satisfies the requirements of Section 856(a)(5) and (6)  
80 of the U. S. Internal Revenue Code by reason of Section  
81 856(h)(2) of the Internal Revenue Code is not considered a  
82 captive real estate investment trust within the meaning of  
83 this section.

84 (E) A real estate investment trust that does not become  
85 regularly traded on an established securities market  
86 within one year of the date on which it first becomes a real  
87 estate investment trust is not considered not to have been  
88 regularly traded on an established securities market,

89 retroactive to the date it first became a real estate invest-  
90 ment trust, and shall file an amended return reflecting the  
91 retroactive designation for any tax year or part year  
92 occurring during its initial year of status as a real estate  
93 investment trust. For purposes of this section, a real estate  
94 investment trust becomes a real estate investment trust on  
95 the first day that it has both met the requirements section  
96 856 of the Internal Revenue Code and has elected to be  
97 treated as a real estate investment trust pursuant to  
98 Section 856(c)(1) of the Internal Revenue Code.

99 (4) *Combined group.* – The term “combined group”  
100 means the group of all persons whose income and appor-  
101 tionment factors are required to be taken into account  
102 pursuant to subsection (j) or (k), section thirteen-a of this  
103 article in determining the taxpayer’s share of the net  
104 business income or loss apportionable to this state.

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

112 (6) *Compensation.*– The term “compensation” means  
113 wages, salaries, commissions and any other form of  
114 remuneration paid to employees for personal services.

115 (7) *Corporation.* – “Corporation” means any corpora-  
116 tion as defined by the laws of this state or organization of  
117 any kind treated as a corporation for tax purposes under  
118 the laws of this state, wherever located, which if it were  
119 doing business in this state would be subject to the tax  
120 imposed by this article. The business conducted by a  
121 partnership which is directly or indirectly held by a  
122 corporation shall be considered the business of the corpo-  
123 ration to the extent of the corporation’s distributive share

124 of the partnership income, inclusive of guaranteed pay-  
125 ments to the extent prescribed by regulation. The term  
126 "corporation" includes a joint-stock company and any  
127 association or other organization which is taxable as a  
128 corporation under the federal income tax law.

129 (8) *Delegate*.—The term "delegate" in the phrase "or his  
130 or her delegate", when used in reference to the Tax  
131 Commissioner, means any officer or employee of the State  
132 Tax Division duly authorized by the Tax Commissioner  
133 directly, or indirectly by one or more redelegations of  
134 authority, to perform the functions mentioned or described  
135 in this article or regulations promulgated thereunder.

136 (9) *Domestic corporation*.—The term "domestic corpora-  
137 tion" means any corporation organized under the laws of  
138 West Virginia and certain corporations organized under  
139 the laws of the state of Virginia before June 20, 1863.  
140 Every other corporation is a foreign corporation.

141 (10) *Effective rate of tax*. — The term "effective rate of  
142 tax" means, as to any state or United States possession,  
143 the maximum statutory rate of tax imposed by the state or  
144 possession on a related member's net income multiplied by  
145 the apportionment percentage, if any, applicable to the  
146 related member under the laws of said jurisdiction. For  
147 purposes of this definition, the effective rate of tax as to  
148 any state or United States possession is zero where the  
149 related member's net income tax liability in said jurisdic-  
150 tion is reported on a combined or consolidated return  
151 including both the taxpayer and the related member where  
152 the reported transactions between the taxpayer and the  
153 related member are eliminated or offset. Also, for pur-  
154 poses of this definition, when computing the effective rate  
155 of tax for a jurisdiction in which a related member's net  
156 income is eliminated or offset by a credit or similar  
157 adjustment that is dependent upon the related member  
158 either maintaining or managing intangible property or

159 collecting interest income in that jurisdiction, the maxi-  
160 mum statutory rate of tax imposed by said jurisdiction  
161 shall be decreased to reflect the statutory rate of tax that  
162 applies to the related member as effectively reduced by the  
163 credit or similar adjustment.

164 (11) *Engaging in business.* – The term “engaging in  
165 business” or “doing business” means any activity of a  
166 corporation which enjoys the benefits and protection of  
167 government and laws in this state.

168 (12) *Federal Form 1120.* – The term “Federal Form  
169 1120” means the annual federal income tax return of any  
170 corporation made pursuant to the United States Internal  
171 Revenue Code of 1986, as amended, or in successor provi-  
172 sions of the laws of the United States, in respect to the  
173 federal taxable income of a corporation, and filed with the  
174 federal Internal Revenue Service. In the case of a corpora-  
175 tion that elects to file a federal income tax return as part  
176 of an affiliated group, but files as a separate corporation  
177 under this article, then as to such corporation Federal  
178 Form 1120 means its pro forma Federal Form 1120.

179 (13) *Fiduciary.* – The term “fiduciary” means, and  
180 includes, a guardian, trustee, executor, administrator,  
181 receiver, conservator or any person acting in any fiduciary  
182 capacity for any person.

183 (14) *Financial organization.* – The term “financial  
184 organization” means:

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

192 (B) A regulated financial corporation or a subsidiary  
193 thereof. As used in this section "regulated financial  
194 corporation" means:

195 (i) An institution, the deposits, shares or accounts of  
196 which are insured under the Federal Deposit Insurance  
197 Act or by the federal Savings and Loan Insurance Corpo-  
198 ration;

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

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

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

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

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

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

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

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

218 (I) Secured or unsecured consumer loans;

219 (II) Installment obligations;

220 (III) Mortgages or other loans secured by real estate or  
221 tangible personal property;

222 (IV) Credit card loans;

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

225 (VI) Loans arising in factoring;

226 (ii) Leasing or acting as an agent, broker or advisor in  
227 connection with leasing real and personal property that is  
228 the economic equivalent of an extension of credit as  
229 defined by the Federal Reserve Board in 12 CFR  
230 225.25(b)(5);

231 (iii) Operating a credit card business;

232 (iv) Rendering estate or trust services;

233 (v) Receiving, maintaining or otherwise handling  
234 deposits;

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

238 (15) *Fiscal year*. – The term “fiscal year” means an  
239 accounting period of twelve months ending on any day  
240 other than the last day of December and on the basis of  
241 which the taxpayer is required to report for federal income  
242 tax purposes.

243 (16) *Includes and including*. – The terms “includes”  
244 and “including”, when used in a definition contained in  
245 this article, do not exclude other things otherwise within  
246 the meaning of the term being defined.

247 (17) *Insurance company*. – The term “insurance com-  
248 pany” means any corporation subject to taxation under  
249 section twenty-two, article three, chapter twenty-nine of  
250 this code or chapter thirty-three of this code or an insur-  
251 ance carrier subject to the surcharge imposed by subdivi-  
252 sion (1) or (3), subsection (f), section three, article two-c,

253 chapter twenty-three of this code or any corporation that  
254 would be subject to taxation under any of those provisions  
255 were its business transacted in this state.

256 (18) *Intangible expense.* – The term “intangible ex-  
257 pense” includes: (A) Expenses, losses and costs for, related  
258 to or in connection directly or indirectly with the direct or  
259 indirect acquisition, use, maintenance or management,  
260 ownership, sale, exchange or any other disposition of  
261 intangible property to the extent those amounts are  
262 allowed as deductions or costs in determining taxable  
263 income before operating loss deductions and special  
264 deductions for the taxable year under the Internal Reve-  
265 nue Code; (B) amounts directly or indirectly allowed as  
266 deductions under Section 163 of the Internal Revenue  
267 Code for purposes of determining taxable income under  
268 the Internal Revenue Code to the extent those expenses  
269 and costs are directly or indirectly for, related to or in  
270 connection with the expenses, losses and costs referenced  
271 in subdivision (A) of this subsection; (C) losses related to,  
272 or incurred in connection directly or indirectly with,  
273 factoring transactions or discounting transactions; (D)  
274 royalty, patent, technical and copyright fees; (E) licensing  
275 fees; and (F) other similar expenses and costs.

276 (19) *Intangible property.* – “Intangible property”  
277 includes patents, patent applications, trade names,  
278 trademarks, service marks, copyrights, mask works, trade  
279 secrets and similar types of intangible assets.

280 (20) *Interest expense.* – “Interest expense” means  
281 amounts directly or indirectly allowed as deductions under  
282 Section 163 of the Internal Revenue Code for purposes of  
283 determining taxable income under the Internal Revenue  
284 Code.

285 (21) “*Internal Revenue Code*” means the Internal  
286 Revenue Code as defined in section three of this article, as  
287 amended and in effect for the taxable year and without

288 regard to application of federal treaties unless expressly  
289 made applicable to states of the United States.

290 (22) *Nonbusiness income.*— The term “nonbusiness  
291 income” means all income other than business income.

292 (23) *Ownership.* – In determining the ownership of  
293 stock, assets or net profits of any person, the constructive  
294 ownership of Section 318(a) of the Internal Revenue Code  
295 of 1986, as amended, as modified by Section 856(d)(5) of  
296 the Internal Revenue Code of 1986, as amended, shall  
297 apply.

298 (24) “Partnership” means a general or limited partner-  
299 ship or organization of any kind treated as a partnership  
300 for tax purposes under the laws of this state.

301 (25) *Person.* – The term “person” is considered inter-  
302 changeable with the term “corporation” in this section.  
303 The term “person” means any individual, firm, partner-  
304 ship, general partner of a partnership, limited liability  
305 company, registered limited liability partnership, foreign  
306 limited liability partnership, association, corporation  
307 whether or not the corporation is, or would be if doing  
308 business in this state, subject to the tax imposed by this  
309 article, company, syndicate, estate, trust, business trust,  
310 trustee, trustee in bankruptcy, receiver, executor, adminis-  
311 trator, assignee or organization of any kind.

312 (26) *Pro forma return.* – The term “pro forma return”  
313 when used in this article means the return which the  
314 taxpayer would have filed with the Internal Revenue  
315 Service had it not elected to file federally as part of an  
316 affiliated group.

317 (27) *Public utility.* – The term “public utility” means  
318 any business activity to which the jurisdiction of the  
319 Public Service Commission of West Virginia extends under  
320 section one, article two, chapter twenty-four of this code.

321 (28) *Qualified regulated investment company.* – The  
322 term “qualified regulated investment company” means  
323 any regulated investment company other than a regulated  
324 investment company where more than fifty percent of the  
325 voting power or value of the beneficial interests or share  
326 of which are owned or controlled, directly or indirectly,  
327 constructively or otherwise, by a single entity that is:

328 (A) Subject to the provision of subchapter C, chapter 1,  
329 subtitle A, Title 26 of the United States Code, as amended;

330 (B) Not exempt from federal income tax pursuant to the  
331 provision of Section 501 of the Internal Revenue Code of  
332 1986, as amended; and

333 (C) Not a regulated investment company as defined in  
334 Section 3 of the Investment Company Act of 1940, as  
335 amended, 15 U. S. C. 80a-3: *Provided*, That a regulated  
336 invested company, the shares of which are held in a  
337 segregated asset account of a life insurance corporation (as  
338 described in Section 817 of the Internal Revenue Code of  
339 1986, as amended), shall be treated as a qualified regu-  
340 lated investment company.

341 (29) *Real estate investment trust.*—The term “real estate  
342 investment trust” has the meaning ascribed to such term  
343 in Section 856 of the Internal Revenue Code of 1986, as  
344 amended.

345 (30) *Regulated investment company.*—The term “regu-  
346 lated investment company” has the same meaning as  
347 ascribed to such term in Section 851 of the Internal  
348 Revenue Code of 1986, as amended.

349 (31) *Related entity.* – “Related entity” means: (A) A  
350 stockholder who is an individual or a member of the  
351 stockholder’s family set forth in Section 318 of the Inter-  
352 nal Revenue Code if the stockholder and the members of  
353 the stockholder’s family own, directly, indirectly, benefi-

354 cially or constructively, in the aggregate, at least fifty  
355 percent of the value of the taxpayer's outstanding stock;  
356 (B) a stockholder, or a stockholder's partnership, limited  
357 liability company, estate, trust or corporation, if the  
358 stockholder and the stockholder's partnerships, limited  
359 liability companies, estates, trusts and corporations own  
360 directly, indirectly, beneficially or constructively, in the  
361 aggregate, at least fifty percent of the value of the tax-  
362 payer's outstanding stock; or (C) a corporation, or a party  
363 related to the corporation in a manner that would require  
364 an attribution of stock from the corporation to the party  
365 or from the party to the corporation under the attribution  
366 rules of the Internal Revenue Code if the taxpayer owns,  
367 directly, indirectly, beneficially or constructively, at least  
368 fifty percent of the value of the corporation's outstanding  
369 stock. The attribution rules of the Internal Revenue Code  
370 shall apply for purposes of determining whether the  
371 ownership requirements of this definition have been met.

372 (32) *Related member.* – “Related member” means a  
373 person that, with respect to the taxpayer during all or any  
374 portion of the taxable year, is: (A) A related entity; (B) a  
375 component member as defined in subsection (b), Section  
376 1563 of the Internal Revenue Code; (C) a person to or from  
377 whom there is attribution of stock ownership in accor-  
378 dance with subsection (e), Section 1563 of the Internal  
379 Revenue Code; or (D) a person that, notwithstanding its  
380 form or organization, bears the same relationship to the  
381 taxpayer as a person described in subdivisions (A) through  
382 (C), inclusive, of this subsection.

383 (33) *Sales.*—The term “sales” means all gross receipts of  
384 the taxpayer that are “business income” as defined in this  
385 section.

386 (34) *State.*— The term “state” means any state of the  
387 United States, the District of Columbia, the Common-  
388 wealth of Puerto Rico, any territory or possession of the

389 United States and any foreign country or political subdivi-  
390 sion thereof.

391 (35) *Tax*.—The term “tax” includes, within its meaning,  
392 interest and additions to tax, unless the intention to give  
393 it a more limited meaning is disclosed by the context.

394 (36) *Taxable year, tax year*. — The term “taxable year”  
395 or “tax year” means the taxable year for which the  
396 taxable income of the taxpayer is computed under the  
397 federal income tax law.

398 (37) *Tax Commissioner*.—The term “Tax Commissioner”  
399 means the Tax Commissioner of the State of West Virginia  
400 or his or her delegate.

401 (38) *Tax haven*. — The term “tax haven” means a  
402 jurisdiction that, for a particular tax year in question: (A)  
403 Is identified by the Organization for Economic Coopera-  
404 tion and Development as a tax haven or as having a  
405 harmful preferential tax regime; or (B) a jurisdiction that  
406 has no, or nominal, effective tax on the relevant income  
407 and: (i) That has laws or practices that prevent effective  
408 exchange of information for tax purposes with other  
409 governments regarding taxpayers subject to, or benefitting  
410 from, the tax regime; (ii) that lacks transparency. For  
411 purposes of this definition, a tax regime lacks transpar-  
412 ency if the details of legislative, legal or administrative  
413 provisions are not open to public scrutiny and apparent or  
414 are not consistently applied among similarly situated  
415 taxpayers; (iii) facilitates the establishment of foreign-  
416 owned entities without the need for a local substantive  
417 presence or prohibits these entities from having any  
418 commercial impact on the local economy; (iv) explicitly or  
419 implicitly excludes the jurisdiction’s resident taxpayers  
420 from taking advantage of the tax regime’s benefits or  
421 prohibits enterprises that benefit from the regime from  
422 operating in the jurisdiction’s domestic market; or (v) has  
423 created a tax regime which is favorable for tax avoidance,

424 based upon an overall assessment of relevant factors,  
425 including whether the jurisdiction has a significant  
426 untaxed offshore financial or other services sector relative  
427 to its overall economy. For purposes of this definition, the  
428 phrase “tax regime” means a set or system of rules, laws,  
429 regulations or practices by which taxes are imposed on  
430 any person, corporation or entity, or on any income,  
431 property, incident, indicia or activity pursuant to govern-  
432 mental authority.

433 (39) *Taxpayer*. – The term “taxpayer” means any  
434 person subject to the tax imposed by this article.

435 (40) *This code*. – The term “this code” means the Code  
436 of West Virginia, 1931, as amended.

437 (41) *This state*. – The term “this state” means the State  
438 of West Virginia.

439 (42) “United States” means the United States of  
440 America and includes all of the states of the United States,  
441 the District of Columbia and United States territories and  
442 possessions.

443 (43) “Unitary business” means a single economic  
444 enterprise that is made up either of separate parts of a  
445 single business entity or of a commonly controlled group  
446 of business entities that are sufficiently interdependent,  
447 integrated and interrelated through their activities so as to  
448 provide a synergy and mutual benefit that produces a  
449 sharing or exchange of value among them and a signifi-  
450 cant flow of value to the separate parts. For purposes of  
451 this article and article twenty-three of this chapter, any  
452 business conducted by a partnership shall be treated as  
453 conducted by its partners, whether directly held or  
454 indirectly held through a series of partnerships, to the  
455 extent of the partner’s distributive share of the partner-  
456 ship’s income, regardless of the percentage of the partner’s  
457 ownership interest or the percentage of its distributive or

458 any other share of partnership income. A business con-  
459 ducted directly or indirectly by one corporation through  
460 its direct or indirect interest in a partnership is unitary  
461 with that portion of a business conducted by one or more  
462 other corporations through their direct or indirect interest  
463 in a partnership if there is a synergy and mutual benefit  
464 that produces a sharing or exchange of value among them  
465 and a significant flow of value to the separate parts and  
466 the corporations are members of the same commonly  
467 controlled group.

468 (44) *West Virginia taxable income.* – The term “West  
469 Virginia taxable income” means the taxable income of a  
470 corporation as defined by the laws of the United States for  
471 federal income tax purposes, adjusted, as provided in this  
472 article: *Provided*, That in the case of a corporation having  
473 income from business activity which is taxable without  
474 this state, its “West Virginia taxable income” shall be the  
475 portion of its taxable income as defined and adjusted as is  
476 allocated or apportioned to this state under the provisions  
477 of this article.

478 (45) *Valid business purpose.* – “Valid business purpose”  
479 means one or more business purposes, other than the  
480 avoidance or reduction of taxation, which alone or in  
481 combination constitute the primary motivation for a  
482 business activity or transaction, which activity or transac-  
483 tion changes in a meaningful way, apart from tax effects,  
484 the economic position of the taxpayer. The economic  
485 position of the taxpayer includes an increase in the market  
486 share of the taxpayer or the entry by the taxpayer into  
487 new business markets.

488 (b) *Effective date.* – The amendments to this section  
489 made in the year 2009 are retroactive and are effective for  
490 tax years beginning on and after January 1, 2009.

**§11-24-4b. Dividends paid deduction to be added back in determining net income for captive real estate investment trusts and regulated investment companies; deductible intangible expenses and deductible interest paid to be added back in determining net income of certain entities.**

1 (a) The dividend paid deduction otherwise allowed by  
2 federal law in computing net income of a real estate  
3 investment trust that is subject to federal income tax shall  
4 be added back in computing the tax imposed by this  
5 article if the real estate investment trust is a captive real  
6 estate investment trust.

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

14 (c) *Intangible expenses otherwise deductible to be added*  
15 *back for certain taxpayers. –*

16 (1) For purposes of computing its net income under this  
17 chapter, a taxpayer shall add back otherwise deductible  
18 intangible expense directly or indirectly paid, accrued or  
19 incurred in connection with one or more direct or indirect  
20 transactions with one or more related members.

21 (2) If the related member was subject to tax in this state  
22 or another state or possession of the United States or a  
23 foreign nation or some combination thereof on a tax base  
24 that included the intangible expense paid, accrued or  
25 incurred by the taxpayer, the taxpayer shall receive a  
26 credit against tax due in this state in an amount equal to  
27 the higher of the tax paid by the related member with  
28 respect to the portion of its income representing the

29 intangible expense paid, accrued or incurred by the  
30 taxpayer, or the tax that would have been paid by the  
31 related member with respect to that portion of its income  
32 if: (A) That portion of its income had not been offset by  
33 expenses or losses; or (B) the tax liability had not been  
34 offset by a credit or credits. The credit determined shall  
35 be multiplied by the apportionment factor of the taxpayer  
36 in this state. However, in no case shall the credit exceed  
37 the taxpayer's liability in this state attributable to the net  
38 income taxed as a result of the adjustment required by  
39 subdivision (1) of this subsection.

40 (3) (A) The adjustment required in subdivision (1) of  
41 this subsection and the credit allowed in subdivision (2) of  
42 this subsection shall not apply to the portion of the  
43 intangible expense that the taxpayer establishes by clear  
44 and convincing evidence meets both of the following  
45 requirements: (i) The related member during the same  
46 taxable year directly or indirectly paid, accrued or in-  
47 curred a portion to a person that is not a related member;  
48 and (ii) the transaction giving rise to the intangible  
49 expense between the taxpayer and the related member was  
50 undertaken for a valid business purpose.

51 (B) The adjustment required in subdivision (1) of this  
52 subsection and the credit allowed in subdivision (2) of this  
53 subsection shall not apply if the taxpayer establishes by  
54 clear and convincing evidence of the type and in the form  
55 specified by the Tax Commissioner that: (i) The related  
56 member was subject to tax on its net income in this state  
57 or another state or possession of the United States or some  
58 combination thereof; (ii) the tax base for said tax included  
59 the intangible expense paid, accrued or incurred by the  
60 taxpayer; and (iii) the aggregate effective rate of tax  
61 applied to the related member is no less than the tax rate  
62 imposed under this article.

63 (C) The adjustment required in subdivision (1) of this  
64 subsection and the credit allowed in subdivision (2) of this  
65 subsection shall not apply if the taxpayer establishes by  
66 clear and convincing evidence of the type and in the form  
67 specified by the commissioner that: (i) The intangible  
68 expense was paid, accrued or incurred to a related member  
69 organized under the laws of a country other than the  
70 United States; (ii) the related member's income from the  
71 transaction was subject to a comprehensive income tax  
72 treaty between that country and the United States; (iii) the  
73 related member's income from the transaction was taxed  
74 in that country at a tax rate at least equal to that imposed  
75 by this state; and (iv) the intangible expense was paid,  
76 accrued or incurred pursuant to a transaction that was  
77 undertaken for a valid business purpose and using terms  
78 that reflect an arm's length relationship.

79 (D) The adjustment required in subdivision (1) of this  
80 subsection and the credit allowed in subdivision (2) of this  
81 subsection shall not apply if the corporation and the  
82 commissioner agree in writing to the application or use of  
83 alternative adjustments or computations. The commis-  
84 sioner may, in his or her discretion, agree to the applica-  
85 tion or use of alternative adjustments or computations  
86 when he or she concludes that in the absence of agreement  
87 the income of the taxpayer would not be reflected accu-  
88 rately.

89 (d) *Interest expense otherwise deductible to be added*  
90 *back for certain taxpayers. —*

91 (1) For purposes of computing its net income under this  
92 chapter, a taxpayer shall add back otherwise deductible  
93 interest paid, accrued or incurred to a related member  
94 during the taxable year.

95 (2) If the related member was subject to tax in this state  
96 or another state or possession of the United States or a  
97 foreign nation or some combination thereof on a tax base

98 that included the interest expense paid, accrued or in-  
99 curred by the taxpayer, the taxpayer shall receive a credit  
100 against tax due in this state equal to the higher of the tax  
101 paid by the related member with respect to the portion of  
102 its income representing the interest expense paid, accrued  
103 or incurred by the taxpayer, or the tax that would have  
104 been paid by the related member with respect to that  
105 portion of its income if: (A) That portion of its income had  
106 not been offset by expenses or losses; or (B) the tax  
107 liability had not been offset by a credit or credits. The  
108 credit determined shall be multiplied by the apporportion-  
109 ment factor of the taxpayer in this state. However, in no  
110 case shall the credit exceed the taxpayer's liability in this  
111 state attributable to the tax imposed under this article as  
112 a result of the adjustment required by subdivision (1) of  
113 this subsection.

114 (3) (A) The adjustment required in subdivision (1) of  
115 this subsection and the credit allowed in subdivision (2) of  
116 this subsection shall not apply if the taxpayer establishes  
117 by clear and convincing evidence, of the type and in the  
118 form determined by the commissioner, that: (i) The  
119 transaction giving rise to interest expense between the  
120 taxpayer and the related member was undertaken for a  
121 valid business purpose; and (ii) the interest expense was  
122 paid, accrued or incurred using terms that reflect an arm's  
123 length relationship.

124 (B) The adjustment required in subdivision (1) of this  
125 subsection and the credit allowed in subdivision (2) of this  
126 subsection shall not apply if the taxpayer establishes by  
127 clear and convincing evidence of the type and in the form  
128 specified by the commissioner that: (i) The related member  
129 was subject to tax on its net income in this state or another  
130 state or possession of the United States or some combina-  
131 tion thereof; (ii) the tax base for said tax included the  
132 interest expense paid, accrued or incurred by the taxpayer;  
133 and (iii) the aggregate effective rate of tax applied to the

134 related member is no less than the statutory rate of tax  
135 applied to the taxpayer under this chapter.

136 (C) The adjustment required in subdivision (1) of this  
137 subsection and the credit allowed in subdivision (2) of this  
138 subsection shall not apply if the taxpayer establishes by  
139 clear and convincing evidence of the type and in the form  
140 specified by the commissioner that: (i) The interest ex-  
141 pense is paid, accrued or incurred to a related member  
142 organized under the laws of a country other than the  
143 United States; (ii) the related member's income from the  
144 transaction is subject to a comprehensive income tax  
145 treaty between that country and the United States; (iii) the  
146 related member's income from the transaction is taxed in  
147 that country at a tax rate at least equal to that imposed by  
148 this state; and (iv) the interest expense was paid, accrued  
149 or incurred pursuant to a transaction that was undertaken  
150 for a valid business purpose and using terms that reflect  
151 an arm's length relationship.

152 (D) The adjustment required in subdivision (1) of this  
153 subsection and the credit allowed in subdivision (2) of this  
154 subsection shall not apply if the corporation and the  
155 commissioner agree in writing to the application or use of  
156 alternative adjustments or computations. The commis-  
157 sioner may, in his or her discretion, agree to the applica-  
158 tion or use of alternative adjustments or computations  
159 when he or she concludes that in the absence of agreement  
160 the income of the taxpayer would not be properly re-  
161 flected.

162 (e) Nothing in this subsection shall be construed to limit  
163 or negate the commissioner's authority to otherwise enter  
164 into agreements and compromises otherwise allowed by  
165 law.

166 (f) *Effective date.* – The amendments to this section  
167 made in the year 2009 are retroactive and are effective for  
168 tax years beginning on and after January 1, 2009.

**CHAPTER 18. EDUCATION.**

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-2a. Definition of levies for general current expense purposes.**

1 (a) For the purposes of this section only, “property”  
2 means only Classes II, III and IV properties exclusive of  
3 natural resources property as defined in section ten, article  
4 one-c, chapter eleven of this code, personal property,  
5 farmland, managed timberland, public utility property or  
6 any other centrally assessed property provided in para-  
7 graphs (A), (B), (C) and (D), subdivision (2), subsection (a),  
8 section five, article one-c, chapter eleven of this code:  
9 *Provided*, That nothing in this subsection may be con-  
10 strued to require that levies for general current expense  
11 purposes be applied only to those properties that are  
12 included in this definition.

13 (b) For the purposes of this section only, the median  
14 ratio of the assessed values to actual selling prices in the  
15 assessment ratio study applicable to the immediately  
16 preceding fiscal year shall be used as the indicator to  
17 determine the percentage market value that properties are  
18 being assessed at.

19 (c) Notwithstanding any other provision of this section  
20 or section two of this article, effective July 1, 2013, for any  
21 county that is not assessing property at least at fifty-four  
22 percent of market value, “levies for general current  
23 expense purposes” means ninety-eight percent of the levy  
24 rate for county boards of education set by the Legislature  
25 pursuant to section six-f, article eight, chapter eleven of  
26 this code.

27 (d) Any county that receives additional state aid due to  
28 its using a percentage less than ninety-eight percent in the  
29 calculation of levies for general current expense purposes,

30 shall report to the state board how the additional state aid  
31 was used. The state board shall compile the reports from  
32 all the county boards into a single report, and shall report  
33 to the Legislative Oversight Commission on Education  
34 Accountability how the county boards used this additional  
35 state aid. The report shall be made annually as soon as  
36 practical after the end of each fiscal year.

**CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

**§21A-6-1c. Voluntary withholding program.**

1 (a) An individual filing a new claim for unemployment  
2 compensation shall, at the time of filing the claim, be  
3 advised by the appropriate bureau employee that:

4 (1) Unemployment compensation is subject to federal  
5 and state income tax;

6 (2) Requirements exist pertaining to estimated tax  
7 payments;

8 (3) The individual may elect to have federal and state  
9 income tax deducted and withheld from the individual's  
10 payment of unemployment compensation at the appropri-  
11 ate federal and state withholding rate; and

12 (4) The individual may change a previously elected  
13 withholding status.

14 (b) Amounts deducted and withheld from unemploy-  
15 ment compensation shall remain in the unemployment  
16 fund until transferred to the appropriate federal or state  
17 taxing authority as payment of income tax.

18 (c) The commissioner shall follow all procedures  
19 specified by the United States Department of Labor,  
20 federal Internal Revenue Service and the West Virginia

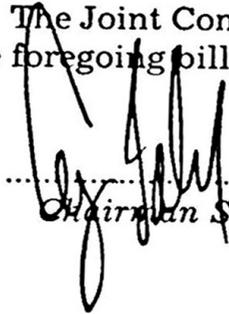
21 State Tax Division pertaining to the deducting and  
22 withholding of income tax.

23 (d) Amounts shall be deducted and withheld in accor-  
24 dance with the priorities established in rules developed by  
25 the commissioner.

26 (e) *Effective date.* – The amendments made to this  
27 section regarding withholding for state income tax shall be  
28 effective for payments made on and after January 1, 2010.

Enr. Com. Sub. for S. B. No. 540] 44

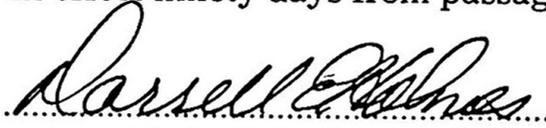
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

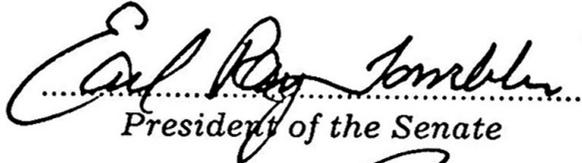
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is appended this the 7<sup>th</sup>  
Day of May, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 1 2009

Time 2:50 pm