WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

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 61. SENIOR CITIZEN PROPERTY TAX PAYMENT DEFERMENT ACT.

§11-61-3. Property tax payment deferment.

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

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

2. (2) Any homestead that:

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

   B. Was most recently used and occupied exclusively for residential purposes by the owner or the owner's spouse; and

   C. Has been retained by the owner for noncommercial purposes.
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(b) A homestead which is owned, in whole or in part, by any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from the deferment provided in this article.

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

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

§11-61-5. Determination; notice of denial of application for deferment.

(a) The assessor shall, as soon as practicable after an application for deferment is filed, review that application and either approve or deny it. The assessor shall approve or disapprove an application for deferment within thirty days of receipt. Any application not approved or denied within thirty days is deemed approved. If the application is denied, the assessor shall promptly, but not later than January 1, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county commission, should the owner desire to take an appeal. The notice required or authorized by
this section shall be served on the owner or his or her authorized representative either by personal service or by certified mail.

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

(c) The assessor shall deny any application made by or for an owner who is required to pay the federal alternative minimum income tax in the current tax year. The application may contain an affirmation, prescribed by the Tax Commissioner, whereby the applicant shall indicate whether the applicant is required to pay the federal alternative minimum income tax in the current tax year. Failure to truthfully indicate whether the applicant is required to pay the federal alternative minimum income tax in the current tax year shall be subject to the applicable penalties of articles nine and ten of this chapter.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5e. Service of notice.

Notwithstanding any other provision of this code, the Tax Commissioner may designate those assessments, notices, statements of account or other Tax Division documents which shall be sent by personal service or United States Postal Service regular mail, or certified mail or registered mail or by any other means at the discretion of the Tax Commissioner, pursuant to any provision of this chapter. Any service of notice addressed by United States 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- 1 sumption.

(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.

(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- 1 isfy the new jobs percentage requirement.

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

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

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

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

Jobs that pay less than $32,000 annually, or less than
the amount prescribed by the commissioner pursuant to
subdivision (1) of this subsection, whichever is higher, or
that pay that salary but do not also provide benefits in
addition to the salary do not qualify for the credit autho-
razed by this section. Jobs that are less than full-time,
permanent positions do not qualify for the credit autho-
razed by this section.
The employer having obtained entitlement to the credit shall not be required to raise wages of employees currently employed in jobs upon which the initial credit was based by reason of the cost of living adjustment.

(b) For purposes of this section, the following definitions apply:

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

(2) **Consumer price index for any calendar year.** — For purposes of subdivision (1) of this subsection, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

(3) **Consumer price index.** — For purposes of subdivision (2) of this subsection, the term “federal consumer price index” means the most recent consumer price index for all urban consumers published by the United States Department of Labor.

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

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

(d) The tax credit authorized by this section may be taken in addition to any credits allowable under article
thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-r or thirteen-s of this chapter.

(e) **Reduction in number of employees credit forfeiture.**

- If, during the year when a new job was created for which credit was granted under this section or during any of the next succeeding four tax years thereafter, net jobs that are attributable to and the consequence of the taxpayer's business operations in this state decrease, counting both new jobs for which credit was granted under this section and preexisting jobs, then the total amount of credit to which the taxpayer is entitled under this section shall be decreased and forfeited in the amount of $3,000 for each 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.**

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

(b) **Rate of tax on motor vehicles.** – Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, the rate of tax on the sale and use of a motor vehicle shall be five percent of its sale price, as defined in section two, article fifteen-b of this chapter:

Provided, That so much of the sale price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-a of this code has been
paid by the purchaser shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor vehicle be new or used.

(c) Motor vehicles purchased out of state. — Notwithstanding this article or article fifteen-a to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by section one, article fifteen-a of this chapter, within this state, regardless of whether the vehicle was purchased in a state other than West Virginia.

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

(e) Definition of motor vehicle. — For purposes of this section, “motor vehicle” means every propellable device in or upon which any person or property is or may be transported or drawn upon a highway including, but not limited to: Automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes; except that the term “motor vehicle” does not include: Modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation
and occupancy; devices operated regularly for the trans-
portation of persons for compensation under a certificate
of convenience and necessity or contract carrier permit
issued by the Public Service Commission; mobile equip-
ment as defined in section one, article one, chapter
seventeen-a of this code; special mobile equipment as
defined in section one, article one, chapter seventeen-a of
this code; trucks, truck tractors and road tractors having
a gross weight of fifty-five thousand pounds or more;
trailers, semitrailers, full trailers, pole trailers and con-
verter gear having weight of two thousand pounds or
greater: Provided, That notwithstanding the provisions of
section nine, article fifteen, chapter eleven of this code, the
exemption from tax under this section for mobile equip-
ment as defined in section one, article one, chapter
seventeen-a of this code; special mobile equipment defined
in section one, article one, chapter seventeen-a of this
code; Class B trucks, truck tractors and road tractors
registered at a gross weight of fifty-five thousand pounds
or more; and Class C trailers, semitrailers, full trailers,
pole trailers and converter gear having weight of two
thousand pounds or greater does not subject the sale or
purchase of the vehicle to the consumer sales and service
tax imposed by section three of this article.

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

(1) The tax imposed by this section does not apply to
any passenger vehicle offered for rent in the normal course
of business by a daily passenger rental car business as
licensed under the provisions of article six-d, chapter
seventeen-a of this code. For purposes of this section, a
daily passenger car means a motor vehicle having a gross
weight of eight thousand pounds or less and is registered
in this state or any other state. In lieu of the tax imposed
by this section, there is hereby imposed a tax of not less than $1 nor more than $1.50 for each day or part of the rental period. The Commissioner of Motor Vehicles shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(2) The tax imposed by this section does not apply where the motor vehicle has been acquired by a corporation, partnership or limited liability company from another corporation, partnership or limited liability company that is a member of the same controlled group and the entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by this section. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

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

(4) The tax imposed by this section does not apply to any active duty military personnel stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from the date the person returns to this state.
(5) The tax imposed by this section does not apply to motor vehicles acquired by registered dealers of this state for resale only.

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

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

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

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

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

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

(D) Makes application to the Division of Motor Vehicles for a title and registration and pays all other fees required
by chapter seventeen-a of this code within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article.

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

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

(g) Division of Motor Vehicles to collect.— Notwithstanding any provision of this article, article fifteen-a and
article ten of this chapter to the contrary, the Division of Motor Vehicles shall collect the tax imposed by this section: Provided, That such tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(h) Dedication of tax to highways. — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, all taxes collected pursuant to this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasury and expended by the Commissioner of Highways for design, maintenance and construction of roads in the state highway system.

(i) Legislative rules; emergency rules. — Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Commissioner of Motor Vehicles shall promulgate legislative rules explaining and implementing this section, which rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and should include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair market value rather than its purchase price. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the State Register before June 15, 2008, those rules may be promulgated as emergency legislative rules as provided in article three, chapter twenty-nine-a of this code.
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(j) Notwithstanding any other provision of this code, effective January 1, 2009, no municipal sales or use tax or local sales or use tax or special downtown redevelopment district excise tax or special district excise tax shall be imposed under article twenty-two, chapter seven of this code or article thirteen, chapter eight of this code or article thirteen-b of said chapter or article thirty-eight of said chapter or any other provision of this code, except this section, on sales of motor vehicles as defined in this article or on any tangible personal property excepted or exempted from tax under this section. Nothing in this subsection shall be construed to prevent the application of the municipal business and occupation tax on motor vehicle retailers and leasing companies.

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

1. Notwithstanding any other provision of this code, the Tax Commissioner may, by rule, specify those exemptions authorized in this article or in other provisions of this code or applicable federal law for which exemption certificates 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 homestead in this state; tax credit for property tax paid on the first $20,000 of value for property tax years after December 31, 2006.

(a) Allowance of credit. –

1. (1) A low-income person who is allowed a $20,000 homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem
property taxes paid on up to the first $10,000 of taxable assessed value of the homestead for property tax years that begin on or after January 1, 2003, except as provided in subdivision (2) of this subsection.

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

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

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

(b) Terms defined. —

For purposes of this section:

(1) “Low income” means federal adjusted gross income for the taxable year that is one hundred fifty percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as
determined annually by the United States Secretary of Health and Human Services.

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

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

(c) Legislative rule. –

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

(d) Confidentiality. –

The Tax Commissioner shall utilize property tax information in the statewide electronic data processing system network to the extent necessary for the purpose of administering this section, notwithstanding any provision of this code to the contrary.
§11-21-22. Low-income family tax credit.

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

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

(a) For the tax years beginning on or after January 1, 2008, any homeowner living in his or her homestead shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of real property taxes paid in excess of four percent of their income. If the refundable credit provided in this section exceeds the amount of taxes imposed by this article, the state Department of Revenue shall refund that amount to the homeowner.

(b) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than $10.
(c) The credit for each property tax year shall be claimed by filing a claim for refund within twelve months after the real property taxes are paid on the homestead.

(d) For the purposes of this section:

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

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

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

(C) Workers' compensation and loss of earnings insurance; and

(D) Nontaxable Social Security benefits; and

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

(e) A homeowner is eligible to benefit from this section or section twenty-one of this article, whichever section provides the most benefit as determined by the homeowner. No homeowner may receive benefits under both this section and section twenty-one of this article during the same taxable year. For tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section. Nothing in this section denies
those entitled to the homestead exemption provided in section three, article six-b of this chapter.

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.

(a) For purposes of this article:

(1) Aggregate effective rate of tax.— The term “aggregate effective rate of tax” shall mean the sum of the effective rates of tax imposed by a state or United States possession or any combination thereof on a related member.

(2) 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.

(3) Captive real estate investment trust. – The term “captive real estate investment trust” shall mean a real estate investment trust, the shares or beneficial interests of which:

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

(B) Are more than fifty percent of the voting power or value of the beneficial interests or shares of which are
25 owned or controlled, directly or indirectly or constructively, by a single entity that is:

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

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

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

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

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

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

45   (iv) Any qualified foreign entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:
(1) At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets as defined in Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents and United States Government securities;

(2) The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;

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

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

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

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

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

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

99 (4) Combined group. — The term "combined group" means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to subsection (j) or (k), section thirteen-a of this article in determining the taxpayer's share of the net business income or loss apportionable to this state.

105 (5) 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.

112 (6) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

115 (7) 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.

(8) 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 Division 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.

(9) 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 June 20, 1863. Every other corporation is a foreign corporation.

(10) Effective rate of tax.—The term "effective rate of tax" means, as to any state or United States possession, the maximum statutory rate of tax imposed by the state or possession on a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or United States possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or
collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by the credit or similar adjustment.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) **Intangible expense.** – The term “intangible ex-

- The term “intangible expense” includes: (A) Expenses, losses and costs for, related
to or in connection directly or indirectly with the direct or
indirect acquisition, use, maintenance or management,
ownership, sale, exchange or any other disposition of
intangible property to the extent those amounts are
allowed as deductions or costs in determining taxable
income before operating loss deductions and special
deductions for the taxable year under the Internal Reve-

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indirect acquisition, use, maintenance or management,
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to or in connection directly or indirectly with the direct or
indirect acquisition, use, maintenance or management,
ownership, sale, exchange or any other disposition of
intangible property to the extent those amounts are
allowed as deductions or costs in determining taxable
income before operating loss deductions and special
deductions for the taxable year under the Internal Reve-
regard to application of federal treaties unless expressly 
made applicable to states of the United States.

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

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

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

(25) **Person.** — The term "person" is considered inter-
changeable with the term "corporation" in this section. 
The term "person" means any individual, firm, partner-
ship, 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, adminis-
trator, assignee or organization of any kind.

(26) **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.

(27) **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.
(28) Qualified regulated investment company. – The term “qualified regulated investment company” means any regulated investment company other than a regulated investment company where more than fifty percent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, constructively or otherwise, by a single entity that is:

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

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

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

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

(30) Regulated investment company.– The term “regulated investment company” has the same meaning as ascribed to such term in Section 851 of the Internal Revenue Code of 1986, as amended.

(31) Related entity. – “Related entity” means: (A) A stockholder who is an individual or a member of the stockholder’s family set forth in Section 318 of the Internal Revenue Code if the stockholder and the members of the stockholder’s family own, directly, indirectly, benefi-
cially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; or (C) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(32) Related member. — "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is: (A) A related entity; (B) a component member as defined in subsection (b), Section 1563 of the Internal Revenue Code; (C) a person to or from whom there is attribution of stock ownership in accordance with subsection (e), Section 1563 of the Internal Revenue Code; or (D) a person that, notwithstanding its form or organization, bears the same relationship to the taxpayer as a person described in subdivisions (A) through (C), inclusive, of this subsection.

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

(34) 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.

(35) **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.

(36) **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.

(37) **Tax Commissioner.**—The term "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(38) **Tax haven.**—The term "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 to governmental authority.

(39) **Taxpayer.** — The term "taxpayer" means any person subject to the tax imposed by this article.

(40) **This code.** — The term "this code" means the Code of West Virginia, 1931, as amended.

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

(42) "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.

(43) "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.

(44) **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.

(45) **Valid business purpose.** — “Valid business purpose” means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for a business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into new business markets.

(b) **Effective date.** — The amendments to this section made in the year 2009 are retroactive and are effective for 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.

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

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

(c) Intangible expenses otherwise deductible to be added back for certain taxpayers. —

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

(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the intangible expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state in an amount equal to the higher of the tax paid by the related member with respect to the portion of its income representing the
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
if: (A) That portion of its income had not been offset by
expenses or losses; or (B) the tax liability had not been
offset by a credit or credits. The credit determined shall
be multiplied by the apportionment factor of the taxpayer
in this state. However, in no case shall the credit exceed
the taxpayer’s liability in this state attributable to the net
income taxed as a result of the adjustment required by
subdivision (1) of this subsection.

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

(B) The adjustment required in subdivision (1) of this
subsection and the credit allowed in subdivision (2) of this
subsection shall not apply if the taxpayer establishes by
clear and convincing evidence of the type and in the form
specified by the Tax Commissioner that: (i) The related
member was subject to tax on its net income in this state
or another state or possession of the United States or some
combination thereof; (ii) the tax base for said tax included
the intangible expense paid, accrued or incurred by the
taxpayer; and (iii) the aggregate effective rate of tax
applied to the related member is no less than the tax rate
imposed under this article.
(C) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The intangible expense was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (ii) the related member's income from the transaction was subject to a comprehensive income tax treaty between that country and the United States; (iii) the related member's income from the transaction was taxed in that country at a tax rate at least equal to that imposed by this state; and (iv) the intangible expense was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be reflected accurately.

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

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

(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base
that included the interest expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state equal to the higher of the tax paid by the related member with respect to the portion of its income representing the interest expense paid, accrued or incurred by the taxpayer, or the tax that would have been paid by the related member with respect to that portion of its income if: (A) That portion of its income had not been offset by expenses or losses; or (B) the tax liability had not been offset by a credit or credits. The credit determined shall be multiplied by the apportionment factor of the taxpayer in this state. However, in no case shall the credit exceed the taxpayer's liability in this state attributable to the tax imposed under this article as a result of the adjustment required by subdivision (1) of this subsection.

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

(B) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The related member was subject to tax on its net income in this state or another state or possession of the United States or some combination thereof; (ii) the tax base for said tax included the interest expense paid, accrued or incurred by the taxpayer; and (iii) the aggregate effective rate of tax applied to the
related member is no less than the statutory rate of tax applied to the taxpayer under this chapter.

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

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be properly reflected.

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

(f) Effective date. — The amendments to this section made in the year 2009 are retroactive and are effective for 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.

(a) For the purposes of this section only, "property" means only Classes II, III and IV properties exclusive of natural resources property as defined in section ten, article one-c, chapter eleven of this code, personal property, farmland, managed timberland, public utility property or any other centrally assessed property provided in paragraphs (A), (B), (C) and (D), subdivision (2), subsection (a), section five, article one-c, chapter eleven of this code: Provided, That nothing in this subsection may be construed to require that levies for general current expense purposes be applied only to those properties that are included in this definition.

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

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

(d) Any county that receives additional state aid due to its using a percentage less than ninety-eight percent in the calculation of levies for general current expense purposes,
shall report to the state board how the additional state aid was used. The state board shall compile the reports from all the county boards into a single report, and shall report to the Legislative Oversight Commission on Education Accountability how the county boards used this additional state aid. The report shall be made annually as soon as practical after the end of each fiscal year.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

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

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

1. Unemployment compensation is subject to federal and state income tax;

2. Requirements exist pertaining to estimated tax payments;

3. The individual may elect to have federal and state income tax deducted and withheld from the individual's payment of unemployment compensation at the appropriate federal and state withholding rate; and

4. The individual may change a previously elected withholding status.

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

(c) The commissioner shall follow all procedures specified by the United States Department of Labor, federal Internal Revenue Service and the West Virginia
State Tax Division pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld in accordance with the priorities established in rules developed by the commissioner.

(e) Effective date. — The amendments made to this section regarding withholding for state income tax shall be effective for payments made on and after January 1, 2010.
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 approved this the _____ Day of May, 2009.

Governor