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I, Herschel H. Rose III, Commissioner of the West Virginia State Tax Department do hereby resubmit to the Office of the Secretary of State two copies of existing rules and regulations to be refiled pursuant to W. Va. Code § 29A-2-5. This refiling pertains to the Corporation Net Income Tax, Chapter 11, Article 10, Series XXIV.


Herschel H. Rose III
State Tax Commissioner

Date Submitted: December 29, 1982

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Valid - Jan 1, 1974 to June 13, 1985

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XXIV
(1973)

Subject: Corporation Net Income Tax

Refiled: December 29, 1982

INTRODUCTION

The West Virginia corporation net income tax act is a conformity statute. The statute adopts federal definitions of items of income, gain, loss and deduction and employs federal taxable income as the starting point for the computation of West Virginia net taxable income.

Every conformity statute must have a minimum number of modifications or adjustments to federal taxable income. Without said modifications, the statute would be violative of federal and state constitutional provisions. Therefore, the corporation income tax act provides certain additions to and subtractions from federal taxable income. These are necessary to arrive at net taxable income for West Virginia purposes.

The act also provides that certain items of income are to be allocated to those jurisdictions in which the same arose. These are items which can be easily segregated from the corporation's total income and include items such as interest, rents and royalties.

A corporation which is taxable both within and without West Virginia is required to allocate and apportion its entire income or loss to West Virginia in accordance with a two-factor formula, consisting of property and payroll. A multistate taxpayer must compute the percentage of its property within West Virginia and the percentage of its payroll that is within West Virginia and average the two. This percentage factor is then applied against the corporation's income to determine that portion which is attributable to West Virginia.

Introduction

Also, it is to be noted that the corporation net income tax act provides special deductions for taxpayers which make expenditures for air and water pollution control facilities.

The rate of corporation income tax is six percent (6%) of West Virginia net taxable income. However, within certain limitations, a credit is granted against the amount of income tax for the amount of business and occupation tax imposed against the taxpayer for the taxable year.

The annual corporation income tax return is due on or before the fifteenth (15th) day of the third month following the close of the taxable year. Estimated returns are due on or before the fifteenth (15th) day of the fourth, sixth, ninth and twelfth months. Estimated payments are to be made in four equal installments.

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

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Subject: Corporation Net Income Tax

Section 1. GENERAL

1.01. Type of Regulations. -- These regulations are "legislative rules" as defined in W. Va. Code § 29A-1-2(d) (1982).

1.02. Scope. -- These regulations establish general guidelines and clarification of the Corporation Net Income Tax.

1.03. Authority. -- These regulations are issued under authority of W. Va. Code § 11-10-5(a).

1.04. Filing Date. -- These regulations were promulgated on November 30, 1973 and filed on November 30, 1973 in the Office of the Secretary of State and refiled in the aforesaid office on December 29, 1982, in compliance with W. Va. Code § 29A-2-5 (1982).

1.05. Effective Date. -- These regulations became effective on January 1, 1974.

1.06. Citation. -- These regulations may be cited as: W. Va. Leg. Reg., (CNIT) 11-10, Series XXIV § _____, page _____ (1973).

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PART I
DEFINITIONS, IMPOSITION OF TAX AND
RATE, AND EXEMPTIONS

Section 2. Meaning of Terms.

2.01. General. -- Any term used in the West Virginia corporation net income tax act and these rules and regulations shall have the same meaning as when used in a comparable context in the laws of the United States relating to corporation income taxes, unless a different meaning is clearly required. Any reference in the West Virginia corporation income tax act and these regulations to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal corporation income tax purposes. All amendments made to the laws of the United States prior to January 1, 1973, shall be given effect in determining the taxes imposed by the West Virginia corporation income tax act for the tax period beginning July 1, 1973, and thereafter. No amendment made to the laws of the United States relating to corporation net income taxes on or after January 1, 1973, shall be given effect.

To illustrate: If on August 5, 1973, the United States Congress enacts a statutory provision making religious groups taxable under federal income tax, the law will have no affect on

West Virginia's corporate income tax; for no amendment made to the laws of the United States on or after January 1, 1973, shall be given effect.

2.02. Definitions. -- For purposes of these regulations:

(a) The term "tax commissioner" means the Tax Commissioner of the State of West Virginia or his delegate, and the term "tax department" means the Tax Department of the State of West Virginia. Said terms are used interchangeably herein.

(b) The term "corporation" means and includes a joint-stock company or any association which is taxable as a corporation under the federal income tax law.

(c) The term "domestic corporation" means any corporation organized under the laws of West Virginia.

(d) The term "foreign corporation" means any corporation other than a domestic corporation.

(e) 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.

(f) The term "taxable year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(g) The term "taxpayer" means a corporation subject to the tax imposed by this article.

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

(i) The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(j) The term "compensation" means wages, salaries, commissions and any form of remunerations paid to employees for personal services.

(k) The term "West Virginia adjusted 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 section 5 of these regulations.

(l) 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 and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(m) "Nonbusiness income" means all income other than business income.

(n) The term "public utility" means any business activity to which the jurisdiction of the Public Service Commission of West Virginia extends under Sec. 1, Art. 2, Ch. 24 of the Code of West Virginia.

(o) The term "this State" means the State of West Virginia.

(p) The term "West Virginia net taxable income" shall mean that amount of income against which the tax rate is applied to arrive at the amount of income tax." West Virginia net taxable income" of a corporation which operates entirely within this State is West Virginia adjusted income less any special deduction for air and water pollution control devices.

"West Virginia net taxable income" of a corporation which operates both within and without this State is West Virginia adjusted income after allocation and apportionment less any expense for air and water pollution control devices.

(q) "Apportionable income" is West Virginia adjusted income after allocation and is that income against which the apportionment percentage is applied to arrive at the amount of business income attributable to West Virginia.

Section 3. Corporations Subject to Tax, Imposition of Tax
and Rate.

3.01. Corporations Required to File.

(a) Domestic corporations. -- All domestic corporations (those organized under the laws of West Virginia) are subject to income tax and are required to file income tax returns, except those corporations specifically exempt from the tax under Section 4 of these rules.

(b) Foreign corporations. -- All foreign corporations (those other than domestic corporations) which are registered to do business in this State, or which are in fact doing business in this State, are subject to this tax and are required to file income tax returns, except those corporations specifically exempt under Section 4 of these rules.

(c) All corporations, foreign and domestic, must file income tax returns with the State Tax Department, even though such corporations were inactive or had no income.

3.02. Doing Business. -- For corporation income tax purposes, the terms "doing business" and "engaging in business" means the operation of any business enterprise or activity in West Virginia for direct or indirect economic gain, including, but not limited to, the following:

(a) The regular maintenance of an office or other place of business within this State.

(b) The regular maintenance, within West Virginia, of an inventory of merchandise or material for sale, distribution, or manufacture, regardless of whether kept on the premises of the taxpayer or in a public or rented warehouse.

(c) The selling or distributing of merchandise to customers in West Virginia directly from a corporation-owned or operated vehicle when title to the merchandise is transferred from the vendor or distributor to the customer at the time of the sale or distribution.

(d) The regular rendering of a service to clients or customers in West Virginia by agents or employees of a foreign corporation.

(e) The owning, renting, or operating of business or income-producing property (real or personal) in West Virginia.

3.03. Corporations with Multistate Activities. -- The fact that a foreign corporation's activities or operations in this State are a part of its overall interstate business does not exempt the corporation from West Virginia income tax liability. A corporation doing business in West Virginia in any of the capacities enumerated in subsection 3.02. above, of this rule, is subject to income tax even if its only operations in this State are a part of its interstate business. A foreign corporation not domesticated in West Virginia whose only business activity within this State during such taxable year is the solicitation of orders by either a resident or nonresident representative for sales of

tangible personal property, which orders are sent outside this State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside this State is not required to file corporation income tax returns. However, if such corporation maintains an office or other place of business in West Virginia, or if it owns any business property in this State, it is subject to the tax.

3.04. Imposition of Tax and Rate.

(a) The corporation income tax is imposed for each taxable year at the rate of six percent (6%) on the West Virginia net taxable income of every foreign or domestic corporation engaging in business in this State or deriving income from property, activity or other sources in this State, except corporations exempt under Section 4 of these rules and regulations.

(b) In the case of a corporation operating wholly within West Virginia, net taxable income shall be the same as taxable income defined in the Internal Revenue Code in effect on December 31, 1972, subject to those adjustments and the special deductions provided at Section 5 of these rules and regulations.

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Section 4. Corporations Exempt from Tax.

4.01. The following corporations shall be exempt from the corporation income tax to the extent provided in this rule:

(a) Corporations which by reason of their purpose or activities are exempt from federal income tax: Provided, that this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

(b) Banks, banking associations, trust companies, building and loan associations, and savings and loan associations.

(c) Insurance companies which pay this State a tax upon premiums.

(d) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": Provided, that this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this Code.

(e) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended. However, every subchapter S corporation shall, on or before the fifteenth (15th) day of the third month following the close of the taxable year, file an information return for such tax year. This filing requirement shall take effect for tax years beginning on or after July 1, 1972.

Section 4.01(f)

(f) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred sixty-seven.

Section 5. Adjustments to Determine West Virginia
Taxable Income.

5.01. General. -- To compute West Virginia taxable income (hereinafter referred to as adjusted income) a corporation uses its federal taxable income as defined in the Internal Revenue Code in effect on December 31, 1972, as a starting point and adds thereto or subtracts therefrom those adjustments or modifications which are listed below. These adjustments to federal taxable income relate to items which are treated differently under this State's corporation income tax act than under federal law.

When the net amount of applicable adjustments is added to or subtracted from federal taxable income, the result is the taxpayer's West Virginia adjusted income. Line 5 of the present West Virginia corporation income tax return is West Virginia adjusted income, and line 1 of the return is federal taxable income.

5.02. Adjustments Increasing Federal Taxable Income -- There shall be added to federal taxable income, unless already included in such income, the following:

(a) Interest income or dividends on obligations, securities or bonds of any state or political subdivision or authority thereof, unless made exempt by compact or agreement to which this State is a party. The amount to be added to federal taxable income is the gross amount of such income or dividends, without reduction for any expenses pertaining thereto.

- (1) Interest or dividends received from obligations, bonds or securities of this State or its political subdivisions or authorities need not be added to federal taxable income.
- (2) To illustrate: The gross amount of interest received by a domestic corporation on securities of the State of Florida must be added to its federal taxable income (line 1 of the return) to arrive at its West Virginia adjusted income (line 5 of the return); for such income is subject to West Virginia income tax but not federal income tax.

(b) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the united States which the laws of the United States exempt from federal income tax but not from State income tax.

(c) Income taxes imposed by this State or any other taxing jurisdiction to the extent deductible in determining federal taxable income and not credited against federal income tax.

(d) Those taxes imposed by this State for which credit is allowed against the West Virginia corporate income tax (see Section 8 of these rules). These taxes which must be added to federal taxable income, are the business and occupation tax and the annual tax on incomes of certain carriers.

- (1) To illustrate: If the North Carolina corporation income tax was deducted in computing federal taxable income by a multistate corporation which incurred liability to that state, the amount of the North Carolina tax must be added to the corporation's federal taxable income as a modification item, for income taxes are not deductible for West Virginia income tax purposes.
- (2) Also, such multistate corporation probably incurred a liability for West Virginia business and occupation tax which it deducted in arriving at federal taxable income; therefore, the amount of the business and occupation tax deduction must be added to federal taxable income. However, the corporation will be granted a credit against its West Virginia income tax liability for the amount of business and occupation tax which it paid to this State.

(e) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from West Virginia corporation income tax, to the extent deductible in determining federal taxable income.

To illustrate: A domestic corporation borrowed one million dollars from a bank to purchase an issue of United States Treasury Certificates. In computing its federal taxable income,

the corporation includes the interest income received from said certificates and deducts as a business expense the interest payable on the bank loan. However, the interest income received from the certificates is not subject to West Virginia income tax and is subtracted from federal taxable income in computing West Virginia adjusted income. See section 5.03(a) below. Conversely, the interest on the bank loan incurred to purchase these certificates is not deductible for purposes of the West Virginia income tax and must be added to federal taxable income in arriving at West Virginia adjusted income.

5.03. Adjustments Decreasing Federal Taxable Income -- The following items are to be subtracted from federal taxable income in order to arrive at the West Virginia adjusted income of a corporation:

(a) Interest upon the direct obligations of the United States or its possessions, to the extent included in federal taxable income.

(b) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in federal taxable income, but exempt from State income taxes under the laws of the United States.

(c) If a corporation's federal taxable income includes any gain from a sale or other disposition of property acquired prior to July 1, 1967, which had a higher fair market value on such

date, than its adjusted basis at said date for federal income tax purposes, a modification must be made to adjust for this difference. The purpose of this adjustment is to prevent the imposition of West Virginia corporation income tax on the property's appreciation in value prior to the effective date (July 1, 1967) of the West Virginia corporation income tax act. The amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between the fair market value and the adjusted basis.

- (1) If a corporation realizes a gain on the sale of property which it received by acquisition other than one which gives it a substituted basis before June 30, 1967, the adjustment explained in this subsection is not allowed; for appreciation upon such property will have occurred after the imposition of the West Virginia corporation income tax act and there is no appreciation prior to the effective date of such act requiring exclusion.
- (2) Where two or more assets are sold at a profit during the same taxable year, and the fair market value of each was higher than its federal adjusted basis on July 1, 1967, the amount to be subtracted from federal taxable income must be computed separately for each asset.

- (3) No adjustment is allowed where property was sold at a loss during the taxable year, even though such property had a higher fair market value on July 1, 1967, than the adjusted basis for federal income tax purposes on that date.

Example 1. A corporation sold securities in 1972 and realized a gain of \$3,000. However, on July 1, 1967, the fair market value of these securities was \$2,000 higher than the federal adjusted basis. This being a long-term gain for federal tax purposes, the amount to be subtracted from federal taxable income is \$2,000 which is the portion of the gain not in excess of the difference between fair market value and federal adjusted basis.

Example 2. A corporation purchased AB Stock in 1964 for \$120,000. The fair market value of such stock on July 1, 1967, was \$155,000. The corporation sold the stock on September 1, 1972, for \$182,000. Therefore, ignoring capital gain treatment for this example, the corporation has realized a gain of \$20,000 on this transaction. However, that appreciation in value from the date of purchase to the effective date of the tax act must be excluded from the total gain for West Virginia tax purposes. In this case, of the total

gain of \$62,000 which is reflected in federal taxable income, \$35,000 thereof must be subtracted as a modification to arrive at West Virginia adjusted income. To reflect this adjustment, the taxpayer will prepare the following schedule.

SCHEDULE E
MODIFICATION FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY

Kind of Property	1. Date Acquired	2. Date Sold	3. Profit Per Federal Return	4. Market Value 7/1/67	5. Depreciation etc. to 7/1/67	6. Original Cost Or Other Federal Basis	7. Total of Col. 4 Plus Col. 5, Minus Col. 6	8. Modifi- cation (see instructions)
1. AB Stock	1964	9/1/72	\$62,000.	\$155,000.	— 0 —	\$120,000.	\$35,000.	\$35,000.
2.								
3.								
4.								
5.								
6.								
Total modification (enter here and on line 2c of Schedule A on page 2)							→	\$.....

(d) The amount of any refund or credit for overpayment of income taxes imposed by this State or any other taxing jurisdiction, to the extent included in income for federal income tax purposes. This adjustment applies to any refund or overpayment of income taxes which was actually included in federal taxable income, whether the refund or overpayment represented West Virginia income taxes or the income taxes of another state, a political subdivision of any state or any foreign government. However, this adjustment does not include any portion of the refund or overpayment which represents interest received. Such interest, whether received in connection with a state or federal refund or overpayment, is not exempt from tax, since it is paid on a claim against a particular government, rather than paid on an obligation arising from the exercise of its borrowing powers.

(e) The amount of dividends received, included in federal taxable income, must be subtracted therefrom.

(f) Thirty-seven and one-half percent (37 1/2%) of the excess of net long-term capital gains over net short-term capital losses as defined in the laws of the United States.

5.04. Recomputation of Net Operating Loss. -- In determining West Virginia adjusted income of a corporation entitled to a net operating loss deduction for federal tax purposes, there shall be added to or subtracted from the corporation's federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction which the adjustments required

by sections 5.02 and 5.03 above are made for each taxable year involved in the computation of such net operating loss deduction.

5.05. Adjustments for Water and Air Pollution Expenditures.

(a) A special deduction is permitted for expenditures of a corporation for water and air pollution control facilities. Said deduction, in the case of a corporation whose activities are wholly within West Virginia, shall be made from West Virginia adjusted income to arrive at West Virginia net taxable income. In the case of a multistate corporation which is subject to allocation and apportionment, said deduction will be made after allocation and apportionment to arrive at West Virginia net taxable income.

(b) The deduction shall be equal to the total amount paid or incurred during a taxable year for the acquisition, construction or development within this State of water pollution control facilities and air pollution control facilities as defined in §48 (h) of the Internal Revenue Code. However the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income, must be added as an adjustment thereto.

(c) A pollution control facility shall mean a new and identifiable treatment facility used exclusively as a means of abating or controlling air and water pollution, and such facility

must be approved by either the Secretary of Health, Education and Welfare or the Secretary of Interior for federal tax purposes in accordance with §48 of the Internal Revenue Code.

(d) Each corporation electing to take advantage of this special deduction is required to initiate certification procedures for the pollution control facility with the appropriate federal agency. The election for this special deduction will be on the annual return for the taxable year in which such amounts were paid or incurred. The taxpayer is required to submit with said return information indicating proof of certification by the appropriate federal agency.

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Section 6. Allocation and Apportionment.

6.01. General.

(a) When a taxpayer has income from sources within this State as well as income from sources outside this State, the division of income and the resulting determination of the portion of the taxpayer's entire income which has its source in this State shall be determined by allocation and apportionment. In such cases, the taxpayer must determine which portion of its adjusted income represents business income and which portion constitutes nonbusiness income. The various items of nonbusiness income are then directly allocated to specific jurisdictions pursuant to the provisions of Section 6.04 of this regulation. The business income of a corporation is divided between the jurisdictions in which the business is conducted pursuant to the property and payroll factors set forth in section 6.05 of this regulation. The sum of the items of nonbusiness income directly allocated to this State, plus the amount of business income attributable to this State by the apportionment formula constitutes the amount of the corporation's West Virginia net taxable income which is subject to tax under the income tax laws of this State.

(b) The word "apportionment" generally refers to the division of adjusted income between jurisdictions by the use of a formula containing apportionment factors (payroll and property), and the word "allocation" generally refers to the assignment of adjusted income to a particular jurisdiction.

(c) A corporation which is taxable both within and without West Virginia is required to allocate and apportion its West Virginia adjusted income. For purposes of this rule, adjusted income is federal taxable income adjusted as provided in Section 5 of these regulations. A taxpayer must have income from a business activity which is taxable by this State and at least one other state, to allocate and apportion income. Income from business activity includes business or nonbusiness income. Therefore, if a corporation has nonbusiness income taxable by one state and business income taxable by another state, the taxpayer's income shall be allocated and apportioned. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of non-business income, all business income shall be attributed to West Virginia.

6.02. Taxable in Another State.

(a) For purposes of allocation and apportionment of adjusted income, the term "taxable in another state" shall apply to a corporation if: (1) in that state the corporation is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the corporation to a net income tax, regardless of whether or not that state imposes such a tax on the corporation.

(b) If another state does not impose any of the taxes set forth in (a) above and has no jurisdiction to subject the corporation to a net income tax, such corporation does not meet the requirements of "taxable in another state". A taxpayer is subject to one of the taxes specified in (a)(1) above only if it engages in business activities in another state. If the corporation voluntarily files and pays such tax when not required to do so by the laws of that state or pays a minimal fee for qualification, registration or for the privilege of doing business in that state, but does not actually engage in business activities in that state, or does engage in some activity, not sufficient for nexus, and the minimum tax bears no relation to the corporation's activities within such state, the corporation is not subject to tax within that state and is therefore not taxable in another state.

(c) The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activities may impose an income tax even though every state does not do so. Other types of taxes may be imposed, by some states, as a substitute for an income tax. Therefore, only those taxes enumerated in (a)(1) and (2) above which may be considered as revenue raising rather than regulatory measures shall be considered in determining whether the corporation is taxable in another state.

The requirement in (a)(2) above has been satisfied if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of Public Law 86-272, 15 U.S.C.A. §§381-385.

6.03. Activities Entirely Within West Virginia. -- If the business activities of a taxpayer take place entirely within this State, the entire income of such taxpayer is subject to the West Virginia corporation income tax act.

6.04. Allocation.

(a) If the business activities of a taxpayer take place partially within and partially without this State and such taxpayer is also taxable in another state, the following items of income are subject to allocation, to the extent that such items constitute nonbusiness income.

- (1) Rents and royalties from real or tangible personal property.
- (2) Patent or copyright royalties.
- (3) Interest.

(b) Method of Allocation.

- (1) Net Rents and Royalties. -- Net rents and royalties from real estate located in West Virginia are allocable to this State. Rental income from real property constitutes business income when the

rental of such property is a principal business activity of the taxpayer or the rental of the property is related to or incidental to the taxpayer's principal business activity.

(2) Net Rents and Royalties from Tangible Personal

Property. -- Net rents and royalties from tangible personal property are allocable to this State if and to the extent that the property is utilized in West Virginia, or in their entirety if the corporation's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized. The extent of utilization of tangible personal property shall be determined by computing the number of days of physical location of the property within the various jurisdictions.

(3) Interest.

(A) Interest income received by a corporation is allocable to this State if the taxpayer's commercial domicile is in this State.

(B) Interest income is business income if the intangible with respect to which the interest was received arises out of or was created by a business activity of the taxpayer and in those situations where the purpose for

acquiring the intangible is directly related to the business activity of the taxpayer.

(4) Patent and Copyright Royalties.

(A) Patent and copyright royalties are allocable to this State to the extent that the patent or copyright is utilized by the payer in this State, or to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

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

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state.

6.05. Apportionment.

(a) All remaining adjusted income, after deducting those items specifically allocated under section 6.04(b)1 through (4) of this regulation, shall be apportioned to the State by the employment of a two-factor formula, consisting of payroll and property.

(b) In order to determine the income attributable to West Virginia, apportionable income shall be multiplied by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. Thus, the apportionment formula will appear as:

$$\frac{\text{Property percentage} + \text{payroll percentage}}{2} = \text{West Virginia apportionment percentage}$$

6.06. Property Factor.

(a) The property factor shall include all real and tangible personal property owned or rented and used by the corporation to produce business income during the taxable year. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, materials, equipment and other real and tangible personal property used in connection with the production of business income.

(b) Property used in connection with the production of nonbusiness income, which is allocated, shall be excluded from the factor.

(c) The numerator of the property factor is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the taxable year.

(d) The denominator of the property factor is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year.

(e) The property, a fraction, will appear as:

$$\frac{\text{"Average value of corporation's real and tangible personal property owned or rented and used in West Virginia during the tax period}}{\text{Average value of all the corporation's real and tangible personal property owned or rented and used during the tax period.}} = \text{Property Percentage}$$

(f) The property factor or property percentage of the apportionment formula is then determined by dividing the numerator by the denominator.

(g) To illustrate: A taxpayer purchased a manufacturing facility on January 1, 1972, within this State, at a cost of \$200,000. It also purchased a warehouse, on the same date, in Ohio, at a cost of \$300,000. The taxpayer owns no other property; nor does it rent other property.

(1) For purposes of the property factor, the numerator will reflect \$200,000 which is the original cost of the West Virginia property.

(2) The denominator of the property factor will reflect \$500,000 which is the original cost of all the corporation's property.

(3) Therefore, the numerator divided by the denominator reflects a property percentage, for this illustration of forty percent (40%).

(h) Valuation of owned property. -- The valuation of owned property is at its original cost with no adjustment made thereto

for any depreciation. Original cost is the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, condemnation, etc.

(1) To illustrate: On January 1, 1970, the taxpayer purchased a factory building in this State at a cost of \$650,000. On January 1, 1972, the corporation expended \$100,000 for remodeling of said building. A depreciation deduction of \$47,000 was claimed by the taxpayer on said building on its 1972 return. The value of the building includible in the numerator and denominator of the property factor is \$750,000 as the depreciation deduction is not considered in determining the value of the building for purposes of the property factor but the capital addition is taken into consideration.

(2) If the building were located without this State, its value (\$750,000) would be includible in the denominator only.

(i) Valuation of rented property.

(1) Property rented by the taxpayer from others is valued at eight (8) times the annual rental rate.

- (2) The annual rental rate is the amount paid as rental for the property for a twelve (12) month period. Where property is rented for less than twelve months, the rent paid for the actual period of rental shall constitute the annual rental rate for the income year.

To illustrate: X Corporation agrees in 1970 to rent a building in this State at \$3,000 per month with the lease to terminate on September 30, 1972. For the income year 1972, the corporation's annualized rental rate is \$27,000 (9 months X \$3,000). The value includible in the numerator and denominator of the property factor is \$216,000 (9 months X \$3,000 rent X 8).

- (3) Annual rent does not include incidental expenses such as hotel and motel accommodations, daily rental of automobiles, equipment, etc.
- (4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the improvements are movable or revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at original cost.

- (5) Any amount payable as additional rent or in lieu of rent, such as taxes, insurance, repairs or any other items which are required to be paid under the terms of the lease shall be included in the property factor.
- (6) Generally, the average value of property shall be determined by averaging the values at the beginning and ending of the taxable year. However, the tax commissioner may require averaging by monthly or other periodic values if such method of averaging is required to properly reflect the average value of the taxpayer's property.
- (7) Averaging by monthly or other periodic values will be applied if substantial fluctuations in the values of the property exist during the income year or where property is acquired after the beginning of the taxable year or disposed of before the end of the taxable year.

6.07. Payroll Factor.

(a) The payroll factor is a fraction, the numerator of which is the total amount of compensation paid in this State during the taxable year, and the denominator of which is the total compensation paid everywhere during the taxable year. The payroll factor shall include the total amount paid by the taxpayer for compensation in connection with earning business income during the taxable year.

(b) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classified as an employee are to be excluded from the payroll factor. Only amounts paid directly to employees are included in the payroll factor.

(c) The payroll factor includes only compensation which is attributable to the business income subject to apportionment. The compensation of any employee whose activities are confined primarily to the production of nonbusiness income shall be excluded from the payroll factor. All compensation paid to general executive officers who are not employees shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice president, secretary, treasurer and any other officer serving in similar capacities.

(d) Compensation paid in this State. -- Compensation is paid in this State if any one of the following tests are met:

- (1) The employee's service is performed entirely within West Virginia.
- (2) The employee's service is performed both within and without this State, but the service performed without the State is incidental to the employee's service within the State. The word "incidental" means any service which is temporary or secondary

in nature, or which is rendered in connection with an isolated transaction.

(3) If the employee's services are performed both within and without the State, the employee's compensation will be attributable to this State:

(A) if the employee's base of operations is in this State; or

(B) if there is no base of operations, the place from which the services is directed or controlled is in this State; or if the base of operations or the place from which the services is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this State.

All other compensation paid by the corporation shall be reflected in the denominator of the payroll factor.

(e) Computation of payroll percentage.

(1) The payroll factor, a fraction, will appear as:

$$\frac{\text{"Compensation paid in this State}}{\text{Compensation paid everywhere"}} = \frac{\text{West Virginia payroll}}{\text{percentage}}$$

(2) The payroll factor or payroll percentage of the apportionment formula is then determined by dividing the numerator by the denominator.

(3) To illustrate: A corporation, in 1972, paid wages to its employees within West Virginia in the amount of \$12,000. It also paid wages to employees in Ohio for said year in the amount of \$88,000. The taxpayer paid no other compensation during the year.

(A) The numerator will reflect \$12,000 as compensation paid in West Virginia.

(B) The denominator will reflect \$100,000 as all compensation paid everywhere during the taxable year.

(C) Therefore, the West Virginia payroll percentage for this illustration is twelve percent (12%), the numerator divided by the denominator.

6.08. Computation of Average of Apportionment Factors.

(a) The corporation is required to determine and compute the apportionment factors applicable to its business operations conducted everywhere during the taxable year. The value of nonbusiness property and items of nonbusiness income, loss and expense directly allocable to West Virginia and other states must be excluded in computing the apportionment factors.

(b) The corporation determines its apportionable business income (or loss) by deducting all nonbusiness income or loss directly allocable to West Virginia and other states from its

West Virginia adjusted income or loss. West Virginia adjusted income is federal taxable income plus or minus those modifications described in Section 5 of these rules.

(c) The corporation must then determine the amount of its income attributable to this State by applying the average of the property factor and the payroll factor to the apportionable business income.

(d) To illustrate: A corporation owns and rents property within this State with a computed value of \$17,000. From operations everywhere, the corporation has property with a value of \$100,000. Said corporation pays compensation to employees within this State in the amount of \$42,000. It pays compensation everywhere in the amount of \$200,000 for this taxable year.

(1) The corporation will determine its apportionment percentage by computing the two factors (property and payroll) and averaging the two. Therefore, the property factor is 17% (numerator ÷ denominator, or \$17,000 ÷ \$100,000), and the payroll factor is 21% (numerator ÷ denominator, or \$42,000 ÷ \$200,000). These two percentage factors are then averaged and reflect an apportionment percentage of 19%. Said apportionment percentage must then be applied against the taxpayer's apportionable business income to arrive at income attributable to West Virginia.

- (2) The taxpayer, for this example, would prepare the following schedule to determine its apportionment percentage.

SCHEDULE C—PERCENTAGE APPORTIONMENT OF INCOME

1. Salaries, wages and other compensation assigned to West Virginia	\$ 42,000.
2. Salaries, wages and other compensation paid everywhere	200,000.
3. Payroll percentage (line 1—line 2)	21%
4. Average value of tangible property in West Virginia	17,000.
5. Average value of tangible property everywhere	100,000.
6. Property percentage (line 4—line 5)	17%
7. Total percentage (add line 3 and line 6)	38%
8. Apportionment percentage (divide line 7 by numeral 2 if both factors are utilized) (Enter on line 11, p. 1)	19%.

NOTE: Both factors must be utilized unless permission in writing has been obtained previously from the division director. If one factor is utilized, enter the full percentage of the one factor on line 8 of this schedule.

6.09. Other Methods of Allocation and Apportionment.

(a) No corporation is allowed to use any alternative formula or method of reporting its income to West Virginia except upon written order of the tax commissioner. Any return in which any formula or method other than as prescribed by statute is used without the written order of the tax commissioner is not a lawful tax return.

(b) If the allocation and apportionment provisions do not fairly represent the extent of the corporation's business activities in this State, the corporation may petition for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable: (1) separate accounting; (2) the exclusion of one of the factors; (3) the inclusion of one or more additional factors; or (4) the employment of any other method to effectuate an equitable allocation and apportionment.

(c) A corporation filing a petition with the tax commissioner for permission to employ a formula of allocation and apportionment unlike that provided by statute shall file said petition in accordance with the following requirements:

- (1) The petition shall be drawn in a form generally used in legal proceedings and shall be sworn to and subscribed by an officer of the corporation having knowledge of the facts stated in the petition.

- (2) The petition shall summarize the business operations of the corporation both within and without West Virginia.
- (3) The petition shall contain the corporation's arguments and contentions respecting the application of the formula prescribed by statute and the method requested, giving grounds, in detail upon which the corporation is basing its arguments and contentions.
- (4) The petition shall clearly disclose the alternative method being requested, showing the results of its application and any supporting and supplementary information which would enable the tax commissioner to fully understand and consider the method requested by the corporation.
- (5) The taxpayer shall submit schedules showing the computations of the ratio of the value of real and personal tangible property used by the corporation in this State to the value of like property used by the corporation both within and without this State.
- (6) The corporation shall submit schedules showing the computations of the ratio of all compensation paid in this State to total compensation paid by the corporation everywhere.

(7) The petition shall be filed with the Tax Commissioner no later than the due date of the tax return for the taxable year for which an alternative method is requested.

(d) In any proceeding brought before or against the Tax Commissioner by a taxpayer seeking to employ a formula unlike that provided by statute, the burden of proof shall be upon said taxpayer.

(e) If the Tax Commissioner demands that a corporation employ a formula unlike that provided by statute, the burden of proof shall be upon the Tax Commissioner.

6.10. Summary and Examples Relating to Allocation and Apportionment.

(a) Corporations Entirely Within State.

(1) Any corporation which has its business activities entirely within West Virginia shall report all income to this State and is not permitted to apportion income. In order to determine its West Virginia net taxable income, said corporation will follow the method below in the order stated.

(A) It will determine its federal taxable income as defined in the laws of the United States in effect before January 1, 1973. (Line 1 of the present corporate tax return.)

- (B) It will add to and subtract from federal taxable income those adjustments set forth in sections 5.02 and 5.03 of these rules. This combined addition and subtraction of modifications from federal taxable income results in West Virginia adjusted income. (Line 5 of present return.)
- (C) From adjusted income the corporation will deduct expenses incurred, if any, for the purchase or construction of air or water pollution control facilities. This subtraction results in West Virginia net taxable income against which the rate is applied to determine the amount of tax.
- (D) The corporation will omit lines 9 through 16 of the tax return, inasmuch as these pertain to taxpayers which are required to allocate and apportion.
- (2) The following example pertains to a corporation which has no business operations outside this State.

Example: XY Corporation operates an automobile dealership within the State. For federal income tax purposes, the corporation determines its federal taxable income to be \$35,000.

The corporation had the following modifications to federal taxable income:

(A) Interest from California bonds	\$1,000	
(B) West Virginia business and occupation tax		<u>350</u>
Total additions		\$1,350
(C) Interest on U. S. bonds	\$ 250	
(D) Sale of property modification	<u>4,000</u>	
Total subtractions		\$4,250

After addition and subtraction of the modifications listed above from federal taxable income, adjusted income, or taxable income in this case, amounts to \$32,100 against which the tax rate is applied.

A completed tax return for this example follows at the next page herein.

WEST VIRGINIA
 CORPORATION NET INCOME TAX RETURN

FORM 112

For the year January 1-December 31, 1972 or taxable year

1972

Corporation Name XY CORPORATION		Federal Employer's Ident. Number 55-0001270	
Street Address 37 Maple Street		Principal Place of Activity in West Virginia Sutton, West Virginia	
City, State and Zip Code Sutton, West Virginia 22071		State of Incorporation W. Va.	Date of Incorporation 3/4/37
Principal Business Activity in West Virginia Automobile sales and services		Business Code No. (See Inst.)	Type of Accounting Method Cash
Place Where Books Are Kept Same as above	Name and Address used on 1971 return (If none filed give reason) Same as above		
Regional Service Center Where Federal Income Tax Returns Are Filed Memphis, Tenn.			
West Virginia Business and Occupation Tax Account Number 123-4567-892-447		West Virginia Carrier Income Tax Account Number N/A	

NOTE: A COPY OF PAGE 1 OF YOUR FEDERAL RETURN MUST BE ATTACHED TO THIS RETURN

1. Federal taxable income	\$35,000.00
2. Modifications increasing federal taxable income (Sch. A, line 1(h), p. 2)	1,350.00
3. Sum of line 1 and line 2	36,350.00
4. Modifications decreasing federal taxable income (Sch. A, line 2(g), p. 2)	4,250.00
5. Adjusted federal taxable income (line 3 less than 4) (IF ALL INCOME IS ATTRIBUTABLE TO WEST VIRGINIA, COMPLETE LINES 6 THROUGH 8)	32,100.00
6. Expense incurred for water and air pollution control (see instructions)	-0-
7. West Virginia taxable income (line 5 less 6)	32,100.00
8. Tax (6 per cent of line 7) WHERE ALL INCOME IS FROM WEST VIRGINIA SOURCES, ENTER THE TAX HERE AND ON LINE 17 BELOW WHERE THE ENTIRE INCOME IS NOT DERIVED FROM SOURCES WITHIN WEST VIRGINIA COMPLETE THE FOLLOWING	1,926.00
9. Total non-apportionable income (or loss) Sch. B, total of col. 3, line 4, p. 2	
10. Income subject to apportionment (line 5 plus loss or minus gain on line 9)	
11. Apportionment percentage (Sch. C, line 8, p. 2)	
12. Income apportioned to West Virginia (line 10 multiplied by line 11)	
13. Add income or deduct loss (Sch. B, total of col. 1)	
14. West Virginia taxable income (line 12 plus or minus line 13)	
15. Expense incurred for water and air pollution control facilities	
16. West Virginia net taxable income (line 14 less line 15)	1,926.00
17. NET INCOME TAX (6 per cent of line 16)	\$200.00
18. (a) Estimated tax paid	350.00
(b) Business and occupation tax credit (Sch. D, line 6)	
(c) Carrier income tax credit (Sch. D, line 6)	550.00
19. Total credits (sum of lines 18(a) through (c))	1,376.00
20. If line 17 is larger than line 18, enter the difference as BALANCE DUE	-0-
21. Interest for late payment (see instructions, p. 4)	1,376.00
22. Total amount due (total of lines 20 and 21)	
23. If line 19 is larger than line 17, enter the difference as OVERPAYMENT	
Check either line 24 or 25. Overpayments to be either refunded in full or credited in full	
24. Amount on line 23 to be credited to 1973 estimated tax <input type="checkbox"/>	
25. Amount on line 23 to be refunded <input type="checkbox"/>	

Under penalty of perjury, I declare that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct, and complete.

DO NOT USE SPACE BELOW

(Signature of Officer)	(Title)	(Date)
(Signature of preparer other than taxpayer)	(Address)	(Date)

SCHEDULE A—MODIFICATIONS TO FEDERAL TAXABLE INCOME

1. Modifications increasing federal taxable income	
(a) Interest or dividends from state or local bonds	\$1,000.00
(b) Interest or dividends from U.S. Government obligations	
(c) Income taxes imposed by this state or any other jurisdiction	350.00
(d) Business and occupation tax imposed by this state	
(e) Carrier income tax imposed by this state	
(f) Interest paid to carry securities exempt from West Virginia income tax	
(g) Federal depreciation for air and water pollution control facilities	\$1,350.00
(h) Total of lines 1(a) through (g) (Enter here and on line 2, page 1)	
2. Modifications decreasing federal taxable income	
(a) Interest income on U.S. Government obligations	250.00
(b) Interest or dividends from any instrumentality of the U.S.	
(c) Modification for the sale of property (attach Schedule E of page 3)	4,000.00
(d) Amount of refund or credit of income taxes imposed by this or any other jurisdiction	
(e) Amount of dividends included in federal taxable income	
(f) Modification for capital gains (attach Schedule F of page 3)	
(g) Total of lines 2(a) through (f) (Enter here and on line 4, p. 1)	\$4,250.00

SCHEDULE B—NON-APPORTIONABLE INCOME ALLOCATED WITHIN AND WITHOUT WEST VIRGINIA

Description	(1) Within West Va.	(2) Without West Va.	(3) Total
1. Rents and royalties from tangible property			
2. Interest income (nonbusiness)			
3. Royalties from patents and copyrights			
4. Totals			

SCHEDULE C—PERCENTAGE APPORTIONMENT OF INCOME

1. Salaries, wages and other compensation assigned to West Virginia	
2. Salaries, wages and other compensation paid everywhere	
3. Payroll percentage (line 1 - line 2)	
4. Average value of tangible property in West Virginia	NOTE: Both factors must be utilized in the apportionment. If neither factor is utilized, enter the full percentage of the one factor on line 8 of this schedule.
5. Average value of tangible property everywhere	
6. Property percentage (line 4 - line 5)	
7. Total percentage (add line 3 and line 6)	
8. Apportionment percentage (divide line 7 by numeral 2 if both factors are utilized) Enter on line 11, p. 1)	

SCHEDULE D—COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION OR CARRIER INCOME TAX PAYABLE

1. Business and occupation or carrier income tax payable for the taxable year	\$ 350.00
2. West Virginia Net Income Tax (line 17, page 1)	1,926.00
3. Allowable income subject to business and occupation tax or carrier income tax. (See instructions)	\$30,000.00
4. West Virginia total income (line 5 or line 14, whichever is applicable)	32,100.00
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)	1,800.00
6. Total credit (the smallest of lines 1, 2 or 5)	350.00

SCHEDULE E - MODIFICATION FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY

Kind of Property	1. Date Acquired	2. Date Sold	3. Profit or Loss Reported	4. Market Value 7/1/67	5. Depreciation etc. to 7/1/67	6. Original Cost Or Other Federal Basis	7. Total of Col. 4 Plus Col. 5, Minus Col. 6	8. Modification (see Instructions)
1. Warehouse	2/1/62	2/1/72	\$6,000	\$10,000	\$1,000	\$7,000	\$4,000	\$4,000
2.								
3.								
4.								
5.								
6.								
Total modification (enter here and on line 2c of Schedule A on page 2)								\$ 4,000

SCHEDULE F - MODIFICATIONS FOR CAPITAL GAINS

1. Net Capital Gains (ATTACH FEDERAL SCHEDULE D)	
2. LESS (a.) Amount shown at line 2(c), Schedule A	
(b) Other (SPECIFY)	
3. Line 1, less Lines 2(a) or 2(b), whichever is applicable	
4. Limitation of modification, Line 3 multiplied by 37%. (Enter here and on line 2(f) of Schedule A)	

SCHEDULE E—MODIFICATIONS FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY ACQUIRED PRIOR TO JULY 1, 1967

YOU MUST ATTACH A COMPLETED SCHEDULE E AND TRUE COPY OF YOUR FEDERAL SCHEDULE D (CAPITAL GAINS AND LOSSES) TO SUPPORT THIS MODIFICATION CLAIM. FAILURE TO DO SO WILL RESULT IN THE DISALLOWANCE OF THE CLAIM.

Subject to certain limitations, a taxpayer reporting on his federal return, a profit from the sale or disposition of property acquired by him prior to July 1, 1967 is allowed a modification reducing his total income for West Virginia purposes by an amount equal to the property's appreciation in value prior to that date. The allowable modification cannot exceed either (a) the profit reported on the federal return or (b) the appreciation prior to July 1, 1967, WHICHEVER IS LESS.

NO MODIFICATION ALLOWED IF PROPERTY ACQUIRED AFTER JUNE 30, 1967. If a taxpayer realizes a gain on the sale of property which he received by an acquisition other than one which gives him a substituted basis before June 30, 1967, a Schedule E modification is not allowed; for appreciation on such property will have occurred after the imposition of the West Virginia Corporation Net Income Tax Act and there is no appreciation prior to the effective date of the Act requiring exclusion.

NO MODIFICATION ALLOWED WHERE LOSS OCCURS. No modification is allowed where property is sold at a loss during the taxable year, even though such property had a higher fair market value on July 1, 1967, than the adjusted basis for federal income tax purposes on that date.

FAIR MARKET VALUE. The fair market value of stock shall be the closing price as listed on one of the stock exchanges at the close of business on June 30, 1967.

SEPARATE COMPUTATION REQUIRED FOR EACH TRANSACTION. Where two or more assets are sold at a profit during the same taxable year and the fair market value of each was higher than its federal adjusted basis on July 1, 1967, the amount to be subtracted from federal adjusted gross income must be computed separately for each asset sold.

COMPUTING THE MODIFICATION. The modification is computed by subtracting from federal adjusted gross income that portion of the gain reported for federal income tax purposes which is not in excess of the difference between the higher fair market value and the adjusted basis for federal income tax purposes, on July 1, 1967.

Completion of Schedule E will provide the modification permitted for each kind of property listed by the taxpayer, the date of acquisition of which is to be entered in column 1.

Enter in column 2 the date you sold the property.

Enter in column 3 the income (without the calculation for long-term capital gains) you realized from the sale of property as reported on your federal return.

Enter in column 4 the fair market value of the property on July 1, 1967.

Enter in column 5 the depreciation and other negative adjustments in basis allowed for federal tax purposes to July 1, 1967.

Enter in column 6 the original cost or other basis of the property, plus any positive adjustments in basis allowed for federal tax purposes to July 1, 1967.

Enter in column 7 the amount in column 4 plus the amount in column 5, minus the amount in column 6. The resultant entry expresses the difference between fair market value on July 1, 1967 and the adjusted basis on that date, i.e., the appreciation in value to July 1, 1967.

Column 8. If the profit on sale is reported on the federal return as ordinary income, enter the amount in column 3 or the amount in column 7, whichever is less.

EXAMPLE: If your total federal income for the calendar year 1971 includes a gain of \$5,000 resulting from the sale of real estate, which on July 1, 1967 had a fair market value of \$10,000 and a basis of \$8,000 for federal income tax purposes on that date, the amount of the gain to be entered in column 8 of line 6 is \$2,000 (since that is the portion of the \$5,000 gain which does not exceed the difference between value and basis).

SCHEDULE F—MODIFICATION FOR CAPITAL GAINS

If the amount of federal taxable income contains a net long-term capital gain over net short-term capital gains on any sale after June 9, 1972, there shall be allowed a decreasing modification of thirty seven and one-half percent ($37\frac{1}{2}\%$) of the excess for West Virginia corporation net income tax purposes.

Line 1 of Schedule F—Enter on this line the amount of federal capital gains shown at LINE 9 of the federal form (attach Federal Schedule D to support this modification).

Line 2(a) of Schedule F—Enter on this line the amount of allowable modification

for property appreciation on Line 2c, Schedule A.

Line 3 of Schedule F—Enter on this line the amount of LINE 1, less the amount of LINE 2(a) or 2(b) whichever is applicable.

Line 2(b) of Schedule F—Enter on this line any amounts which should be subtracted from gains within West Virginia to arrive at West Virginia taxable gains.

Line 4 of Schedule F—Multiply the amount on LINE 3 by thirty seven and one-half percent ($37\frac{1}{2}\%$) and enter the result here and at LINE 2(f) of Schedule A.

(b) Multistate Corporations.

(1) Any corporation which has income from sources within this State and income from sources outside this State must allocate and apportion its income to arrive at the amount of tax due the State. In order to determine its West Virginia net taxable income, said corporation will follow the method below in the order stated.

(A) It will determine its federal taxable income as defined in the laws of the United States in effect prior to January 1, 1973. (Line 1 of the present return.)

(B) It will add to and subtract from federal taxable income those adjustments described in section 5 of these rules. This combined addition and subtraction of modifications from federal taxable income results in West Virginia adjusted income to the multistate corporation. (Line 5 of the present return.)

(C) After determination of adjusted income, the multistate corporation may proceed to allocate particular items of income. (Line 9 and Schedule B of present return.) Corporations which allocate and apportion income omit lines 6 through 8 of the tax return.

- (D) Total allocable income is entered at Line 9 of the return and is added to or deducted from West Virginia adjusted income to arrive at apportionable business income. If the item of allocation is a positive amount, it is subtracted from adjusted income; and if the item is a negative amount, it is added to adjusted income. This procedure effectively eliminates or excludes allocable items from adjusted income in arriving at apportionable income (Line 10 of the return).
- (E) The corporation must then compute its apportionment formula (Schedule C) to find its apportionment percentage. The apportionment percentage (Line 11) is applied against apportionable income (Line 10) to determine income attributable to West Virginia (Line 12).
- (F) The taxpayer must then add West Virginia allocable income (Schedule B) to income attributable to West Virginia, and the sum is West Virginia taxable income (Line 14).
- (G) From West Virginia taxable income (Line 14), the multistate corporation is permitted to deduct any expenses incurred for the acquisi-

tion or construction of air or water pollution control facilities. This deduction results in West Virginia net taxable income against which the rate is applied to determine the amount of tax.

- (2) The following example pertains to a corporation which has income from sources both within and without the State.

Example: AB Corporation sells, services and manufactures coal mining equipment and supplies within and without West Virginia. The corporation computes its federal taxable income to be \$3,800,000 which it places at Line 1 of its West Virginia return.

- (A) The corporation has the following modifications which increase federal taxable income:

- (i) Interest on New
Mexico bonds \$ 1,110
- (ii) Income taxes imposed
by West Virginia,
Kentucky and North
Carolina 129,415
- (iii) West Virginia busi-
ness and occupation
tax 82,328

Section 6.10(b)

	Total additions	\$212,853
(iv)	Property modifica- tions	206,687
(v)	Refund of Kentucky income tax	2,032
(vi)	Dividends	<u>34</u>
	Total subtractions	\$208,753

After addition and subtraction of the modifications listed above, the corporation has West Virginia adjusted income of \$3,804,100.

- (B) The corporation rents tangible personal property and the nonbusiness income (in this case) is subject to allocation. A portion of the tangible personal property is utilized by lessees within West Virginia and a portion is utilized by lessees in Kentucky, a state which subjects the corporation to a net income tax. The rental income from property utilized in Kentucky is \$3,685. See Schedule B of the completed return, which follows, as to the proper allocation for the corporation in this example.
- (C) The corporation must then compute the totals and values of its payroll and property both

within and without West Virginia. This computation is performed on Schedule C of the return and results in the apportionment percentage which is to be applied against apportionable income. After income attributable to West Virginia has been determined, the corporation must add back that portion of rental income which was allocated to West Virginia in Schedule C. A prepared sample return follows at the next page herein.

WEST VIRGINIA
CORPORATION NET INCOME TAX RETURN

FORM 112

1972

For the year January 1-December 31, 1972 or taxable year

beginning 79 ending 78

Corporation Name AB CORPORATION		Federal Employer Ident. Number 48-2176656	
Street Address 102 Brooks St.		Principal Place of Activity in West Virginia Bluefield, W. Va.	
City, State and Zip Code Hazard, Kentucky 73855		State of Incorporation Delaware	Date of Incorporation 10/3/53
Principal Business Activity in West Virginia Manufacture and repair mine equipment		Business Code No. (See Instructions) 5080	Type of Accounting Method Accrual
Place Where Books Are Kept Same as above	Name and Address used on 1971 return (if none filed give reason) Same		
Regional Service Center Where Federal Income Tax Returns Are Filed Memphis, Tenn.			
West Virginia Business and Occupation Tax Account Number 48-2176656		West Virginia Carrier Income Tax Account Number N/A	

NOTE: A COPY OF PAGE 1 OF YOUR FEDERAL RETURN MUST BE ATTACHED TO THIS RETURN

1. Federal taxable income		\$3,800,000.00
2. Modifications increasing federal taxable income (Sch. A, line 1(h), P. 2)		212,853.00
3. Sum of line 1 and line 2		4,012,853.00
4. Modifications decreasing federal taxable income (Sch. A, line 2(g), p. 2)		208,753.00
5. Adjusted federal taxable income (line 3 less than 4) (IF ALL INCOME IS ATTRIBUTABLE TO WEST VIRGINIA, COMPLETE LINES 6 THROUGH 8)		3,804,100.00
6. Expense incurred for water and air pollution control (see instructions)		
7. West Virginia taxable income (line 5 less 6)		
8. Tax (6 per cent of line 7) WHERE ALL INCOME IS FROM WEST VIRGINIA SOURCES, ENTER THE TAX HERE AND ON LINE 17 BELOW WHERE THE ENTIRE INCOME IS NOT DERIVED FROM SOURCES WITHIN WEST VIRGINIA COMPLETE THE FOLLOWING		
9. Total non-apportionable income (or loss) Sch. B, total of col. 3, line 4, p. 2)		20,635.00
10. Income subject to apportionment (line 5 plus loss or minus gain on line 9)		3,783,465.00
11. Apportionment percentage (Sch. C, line 8, p. 2)		53.7831%
12. Income apportioned to West Virginia (line 10 multiplied by line 11)		2,034,865.00
13. Add income or deduct loss (Sch. B, total of col. 1)		16,950.00
14. West Virginia taxable income (line 12 plus or minus line 13)		2,051,815.00
15. Expense incurred for water and air pollution control facilities		- 0 -
16. West Virginia net taxable income (line 14 less line 15)		2,051,815.00
17. NET INCOME TAX (6 per cent of line 16)		123,109.00
18. (a) Estimated tax paid	\$75,000.00	
(b) Business and occupation tax credit (Sch. D, line 6)	62,328.00	
(c) Carrier income tax credit (Sch. D, line 6)	- 0 -	
18. Total credits (sum of lines 18(a) through (c))		157,328.00
20. If line 17 is larger than line 18, enter the difference as BALANCE DUE		
21. Interest for late payment (see instructions, p. 4)		
22. Total amount due (total of lines 20 and 21)		54,219.00
23. If line 18 is larger than line 17, enter the difference as OVERPAYMENT		
Check either line 24 or 25. Overpayments to be either refunded in full or credited in full		
24. Amount on line 23 to be credited to 1973 estimated tax	<input type="checkbox"/>	
25. Amount on line 23 to be refunded	<input type="checkbox"/>	

DO NOT USE SPACE BELOW:

Under penalties of perjury, I declare that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct, and complete.

 (Signature of Officer) (Title) (Date)

 (Signature of preparer other than taxpayer) (Address) (Date)

SCHEDULE A—MODIFICATIONS TO FEDERAL TAXABLE INCOME

1. Modifications increasing federal taxable income	
(a) Interest or dividends from state or local bonds	\$ 1,110.00
(b) Interest or dividends from U.S. Government obligations	
(c) Income taxes imposed by this state or any other jurisdiction	129,415.00
(d) Business and occupation tax imposed by this state	82,328.00
(e) Carrier income tax imposed by this state	
(f) Interest paid to carry securities exempt from West Virginia income tax	
(g) Federal depreciation for air and water pollution control facilities	
(h) Total of lines 1(a) through (g) (Enter here and on line 2, page 1)	212,853.00
2. Modifications decreasing federal taxable income	
(a) Interest income on U.S. Government obligations	
(b) Interest or dividends from any instrumentality of the U.S.	
(c) Modification for the sale of property (attach Schedule E of page 3)	206,667.00
(d) Amount of refund or credit of income taxes imposed by this or any other jurisdiction	2,032.00
(e) Amount of dividends included in federal taxable income	34.00
(f) Modification for capital gains (attach Schedule F of page 3)	
(g) Total of lines 2(a) through (f) (Enter here and on line 4, p. 1)	208,753.00

SCHEDULE B—NON-APPORTIONABLE INCOME ALLOCATED WITHIN AND WITHOUT WEST VIRGINIA

Description	(1) Within West Va.	(2) Without West Va.	(3) Total
1. Rents and royalties from tangible property	16,950.00	3,685.00	20,635.00
2. Interest income (nonbusiness)			
3. Royalties from patents and copyrights			
4. Totals	16,950.00	3,685.00	20,635.00

SCHEDULE C—PERCENTAGE APPOINTMENT OF INCOME

1. Salaries, wages and other compensation assigned to West Virginia	\$4,368,780.00
2. Salaries, wages and other compensation paid everywhere	7,728,568.00
3. Payroll percentage (line 1 ÷ line 2)	56.5277%
4. Average value of tangible property in West Virginia	17,617,099.00
5. Average value of tangible property everywhere	34,517,265.00
6. Property percentage (line 4 ÷ line 5)	51.0385%
7. Total percentage (add line 3 and line 6)	107.5662%
8. Apportionment percentage (divide line 7 by numeral 2 if both factors are utilized) Enter on line 11, p. 1)	53.7831%

NOTE: Both factors must be utilized unless permission in writing has been obtained previously from the Director. If one factor is utilized, enter the full percentage of the one factor on line 8 of this schedule.

SCHEDULE D—COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION OR CARRIER INCOME TAX PAYABLE

1. Business and occupation or carrier income tax payable for the taxable year	82,328.00
2. West Virginia Net Income Tax (line 17, page 1)	123,109.00
3. Allowable income subject to business and occupation tax or carrier income tax. (See instructions)	\$2,051,815.00
4. West Virginia total income (line 5 or line 14, whichever is applicable)	2,051,815.00
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)	123,109.00
6. Total credit (the smallest of lines 1, 2 or 5)	82,328.00

SCHEDULE E—MODIFICATION FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY

Kind of Property	1. Date Acquired	2. Date Sold	3. Profit Per Federal Return	4. Market Value 7/1/67	5. Depreciation etc. to 7/1/67	6. Original Cost Or Other Federal Basis	7. Total of Col. 4 Plus Col. 5, Minus Col. 6	8. Modification (see instructions)
1. Building	1951	1972	268,070	250,000	72,949	116,262	206,687	206,687
2.								
3.								
4.								
5.								
6.								
Total modification (enter here and on the 2c of Schedule A on page 2)								\$ 206,687

SCHEDULE F — MODIFICATIONS FOR CAPITAL GAINS

1. Net Capital Gains (ATTACH FEDERAL SCHEDULE D)	
2. LESS (a.) Amount shown at line 2(c), Schedule A	
(b) Other (SPECIFY)	
3. Line 1, less Lines 2(a) or 2(b), whichever is applicable	
4. Limitation of modification, Line 3 multiplied by 37%. (Enter here and on line 2(f) of Schedule A)	

SCHEDULE E—MODIFICATIONS FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY ACQUIRED PRIOR TO JULY 1, 1967

YOU MUST ATTACH A COMPLETED SCHEDULE E AND TRUE COPY OF YOUR FEDERAL SCHEDULE D (CAPITAL GAINS AND LOSSES) TO SUPPORT THIS MODIFICATION CLAIM. FAILURE TO DO SO WILL RESULT IN THE DISALLOWANCE OF THE CLAIM.

Subject to certain limitations, a taxpayer reporting on his federal return, a profit from the sale or disposition of property acquired by him prior to July 1, 1967 is allowed a modification reducing his total income for West Virginia purposes by an amount equal to the property's appreciation in value prior to that date. The allowable modification cannot exceed either (a) the profit reported on the federal return or (b) the appreciation prior to July 1, 1967, WHICHEVER IS LESS.

NO MODIFICATION ALLOWED IF PROPERTY ACQUIRED AFTER JUNE 30, 1967. If a taxpayer realizes a gain on the sale of property which he received by an acquisition other than one which gives him a substituted basis before June 30, 1967, a Schedule E modification is not allowed; for appreciation on such property will have occurred after the imposition of the West Virginia Corporation Net Income Tax Act and there is no appreciation prior to the effective date of the Act requiring exclusion.

NO MODIFICATION ALLOWED WHERE LOSS OCCURS. No modification is allowed where property is sold at a loss during the taxable year, even though such property had a higher fair market value on July 1, 1967, than the adjusted basis for federal income tax purposes on that date.

FAIR MARKET VALUE. The fair market value of stock shall be the closing price as listed on one of the stock exchanges at the close of business on June 30, 1967.

SEPARATE COMPUTATION REQUIRED FOR EACH TRANSACTION. Where two or more assets are sold at a profit during the same taxable year and the fair market value of each was higher than its federal adjusted basis on July 1, 1967, the amount to be subtracted from federal adjusted gross income must be computed separately for each asset sold.

COMPUTING THE MODIFICATION. The modification is computed by subtracting from federal adjusted gross income that portion of the gain reported for federal income tax purposes which is not in excess of the difference between the higher fair market value and the adjusted basis for federal income tax purposes, on July 1, 1967.

Completion of Schedule E will provide the modification permitted for each kind of property listed by the taxpayer, the date of acquisition of which is to be entered in column 1.

Enter in column 2 the date you sold the property.

Enter in column 3 the income (without the calculation for long-term capital gains) you realized from the sale of property as reported on your federal return.

Enter in column 4 the fair market value of the property on July 1, 1967.

Enter in column 5 the depreciation and other negative adjustments in basis allowed for federal tax purposes to July 1, 1967.

Enter in column 6 the original cost or other basis of the property, plus any positive adjustments in basis allowed for federal tax purposes to July 1, 1967.

Enter in column 7 the amount in column 4 plus the amount in column 5, minus the amount

in column 6. The resultant entry expresses the difference between fair market value on July 1, 1967 and the adjusted basis on that date, i.e., the appreciation in value to July 1, 1967.

Column 8. If the profit on sale is reported on the federal return as ordinary income, enter the amount in column 3 or the amount in column 7, whichever is less. If the profit on sale is reported on the federal return as a long-term capital gain, enter the amount in column 3 or 50% of the amount in column 7, whichever is less.

EXAMPLE: If your total federal income for the calendar year 1971 includes a gain of \$5,000 resulting from the sale of real estate, which on July 1, 1967 had a fair market value of \$10,000 and a basis of \$8,000 for federal income tax purposes on that date, the amount of the gain to be entered in column 8 of line 6 is \$2,000 (since that is the portion of the \$5,000 gain which does not exceed the difference between value and basis).

SCHEDULE F--MODIFICATION FOR CAPITAL GAINS

If the amount of federal taxable income contains a net long-term capital gain over net short-term capital gains on any sale after June 9, 1972, there shall be allowed a decreasing modification of thirty seven and one-half percent (37½%) of the excess for West Virginia corporation net income tax purposes.

Line 1 of Schedule F—Enter on this line the amount of federal capital gains shown at LINE 9 of the federal form (attach Federal Schedule D to support this modification).

Line 2(a) of Schedule F—Enter on this line the amount of allowable modification

for property appreciation on Line 2c, Schedule A.

Line 3 of Schedule F—Enter on this line the amount of LINE 1, less the amount of LINE 2(a) or 2(b) whichever is applicable.

Line 2(b) of Schedule F—Enter on this line any amounts which should be subtracted from gains within West Virginia to arrive at West Virginia taxable gains.

Line 4 of Schedule F—Multiply the amount on LINE 3 by thirty seven and one-half percent (37½%) and enter the result here and at LINE 2(f) of Schedule A. (Effective January 1, 1974.)

Section 7. Tax Years and Accounting Methods.

7.01. For purposes of the West Virginia corporation income tax, a taxpayer's taxable year and the method of accounting shall be the same as for federal purposes.

7.02. If a corporation's taxable year or method of accounting is changed federally, the same change is adopted for West Virginia.

Section 8. Credits Against Tax.

8.01. If the corporate taxpayer is subject to the business and occupation tax imposed by West Virginia Code ch. 11, art. 13, or the annual tax on incomes of certain carriers imposed by Code ch. 11, art. 12A, it may be entitled to a credit against its corporation income tax liability. However, the credit may not exceed the amount of corporate income tax which is attributable to the West Virginia income derived from the business with respect to which the business and occupation or carrier tax was imposed. In other words, the credit is limited to that amount of income tax which is imposed against income which is subject to both the corporate income tax and the other tax (either business and occupation tax or carrier tax as the case may be).

8.02. The credit shall be limited to the smallest of the following:

- (a) The amount of other tax imposed.
- (b) The amount of West Virginia corporate income tax before credits.
- (c) The amount of West Virginia corporate income tax imposed on income from the business subject to the other tax.

Limitation (c) is placed upon the amount of the credit to preclude exempting from corporate income tax such of the taxpayer's income as is not derived from a business subject to business and occupation tax. Stated another way, the credit for business and

occupation tax (and carrier tax) cannot offset or eliminate the income tax imposed on income derived from sources which are not subject to the other tax.

8.03. To illustrate: A corporation pays business and occupation tax in the amount of \$2,500 for the 1972 income year. The taxpayer had West Virginia taxable income (Line 5 of the return for a corporation entirely within the State, and Line 14 for a multistate corporation) for the year in the amount of \$20,000. This \$20,000 of income consisted of \$15,000 worth from business operations which were subject to business and occupation tax. The remaining \$5,000 of income was derived from nonbusiness interest income from within this State (allocated to West Virginia) and was not subject to business and occupation tax. Therefore, three-fourths ($3/4$) of the taxpayer's corporate taxable income is subject to both the corporate income tax and the business and occupation tax, which means that the credit cannot exceed three-fourths of the amount of income tax imposed against the whole. The remaining one-fourth ($1/4$) against which no business and occupation tax is imposed cannot be utilized to increase the credit.

(a) The taxpayer, in this illustration, will prepare the following schedule in the following manner to arrive at the applicable credit.

SCHEDULE D—
COMPUTATION OF CREDIT FOR BUSINESS AND OCCUPATION
OR CARRIER INCOME TAX PAYABLE

1. Business and occupation or carrier income tax payable for the taxable year	....	\$2,500
2. West Virginia Net Income Tax (line 17, page 1) 6% × 20,000	.....	1,200
3. Allowable income subject to business and occupation tax or carrier income tax (See instructions)	.....	15,000
4. West Virginia total income (line 5 or line 14, whichever is applicable)	20,000	.....
5. Limitation of credit (line 2 multiplied by line 3 and divided by line 4)	.....	900
6. Total credit (the smallest of line 1, 2 or 5)	.....	900

(b) As can be seen from the above completed schedule, the amount of the credit is effectively limited to that portion of income tax imposed against the whole which is attributable to West Virginia income which is subject to the income tax and the other tax. Inasmuch as three-fourths of the income is subject to both taxes, the amount of other tax imposed, if that large, may offset three-fourths of the income tax.

8.04. For purposes of the business and occupation tax credit, the amount of business and occupation tax entered at Line 1 of Schedule D shall be that amount of tax liability computed by the corporation on its business and occupation tax return before credit against such liability for industrial expansion.

To illustrate: A taxpayer computes its business and occupation tax liability to be \$50,000 before applying any credits, on its business and occupation tax form, against such amount. It is granted a credit against business and occupation tax for industrial expansion expenditures in the amount of \$19,000, which, in effect, means that such taxpayer pays only \$31,000 in business and occupation tax. In computing its credit against corporate income tax for business and occupation tax imposed, it may use \$50,000 as business and occupation tax imposed in the computation of the credit.

PART II
RETURNS, DECLARATIONS AND
PAYMENT OF TAX

Section 13. Returns, Time for Filing.

13.01. Annual Return and Due Date. The West Virginia annual corporation income tax return is due on or before the fifteenth (15th) day of the third month following the close of the taxable year. Therefore, a corporation which operates on a calendar year basis must file its corporate return on or before March 15.

13.02. The responsible fiscal officer of the corporation shall affix his signature to the return. Said signature shall constitute a certification by the officer that the statements contained therein are true.

13.03. A copy of page one of the corporation's federal income tax return must be attached to the West Virginia income tax return.

SECTIONS 14 AND 15 RESERVED FOR FUTURE USE.

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Section 16. Declaration of Estimated Tax.

16.01. If a corporation can expect its taxable income to exceed \$10,000 for the year, it is required to make a declaration of estimated tax. "Estimated tax" means income tax less any allowable credits against the tax. A corporation which expects to have estimated tax of less than \$100 for the taxable year is not required to file a declaration of estimated tax.

16.02. An amended declaration may be made at any time during the taxable year. Said amendment must show the amount originally estimated and the new estimation. If an amendment of a declaration is filed, the remaining installments shall be ratably increased or decreased to reflect any adjustment in the estimated tax by reason of such amendment.

16.03. Time for Filing Declaration. The declaration of estimated tax shall be filed on or before the fifteenth (15th) day of the fourth month of the taxable year. In other words, a corporation on a calendar year basis shall file its declaration on or before April 15.

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Section 17. Installment Payments of Estimated Tax.

17.01. Estimated payments are made in four (4) equal installments. Returns and payments are due on or before the fifteenth (15th) day of the fourth, sixth, ninth and twelfth months of the corporation's taxable year. The first installment shall be paid with the declaration of estimated tax.

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Section 18. Extensions of Time

18.01. General. The Tax Commissioner may grant an extension of time for the filing of any return, installment or document required to be filed under the corporation income tax act or for the payment of any tax due. All requests for extensions of time shall be in writing and shall be filed with the Business Tax Division of the State Tax Department on or before the due date of the return for which the request is made.

18.02. Automatic Extension of Time. A taxpayer who has received an extension of time in which to file its federal income tax return automatically receives a corresponding extension of time in which to file its West Virginia income tax return. A taxpayer upon receiving a federal extension must make application for the West Virginia extension.

18.03. West Virginia Extensions of Time. In rare cases, where an extension of time is not needed federally, but it is felt, by the taxpayer, that it is needed for West Virginia income tax purposes, a specific request should be made to the Business Tax Division. Generally, an extension of time to file a return on an original application will be limited to a period of time not in excess of six months. Longer periods of time will not be granted by the Tax Commissioner unless sufficient need for such extended period is clearly shown. In no event will an extension of time to file a West Virginia return be granted in excess of 18 months.

18.04. Amount Determined as Deficiency.

(a) An extension of time for filing the return automatically extends the time for payment of the tax. The Tax Commissioner may separately grant an extension up to 18 months for the payment of the tax, upon a written request by the taxpayer setting forth complete information as to the reasons for its inability to make payment of the tax due on its return. If the taxpayer feels it cannot make payment of the tax due within the prescribed period of extension, it may make a request for an additional extension to the Tax Commissioner. Such additional extension may not exceed 12 months and may be granted only if it is established to the satisfaction of the Tax Commissioner that exceptional circumstances exist and that to require payment within the time prescribed by the first extension would work an undue hardship on the corporation.

(b) No extension of payment of taxes will be granted if any part of the deficiency is due to a disregard of rules and regulations or to fraud.

(c) Except where specifically provided otherwise, if the time for payment of tax is extended, interest at the rate of six per centum per annum from the original due date of the return until paid shall be added to such tax. The preceding sentence also applies to the automatic extension referred to in section 18.02 of this rule.

18.05. Furnishing of Security. As a prerequisite to granting an extension of time for payment of any tax or deficiency, the Tax Commissioner may require the corporation to furnish a bond or other security. Such bond or other security shall be in an amount not exceeding the amount for which the extension of time for payment is granted.

Section 19. Requirements Concerning Returns, Notices, Records
and Statements.

19.01. General.

(a) Every corporation subject to tax under the West Virginia corporation income tax act, and any corporation required to file a return of information with respect to income, shall keep such permanent books of account or records as are sufficient to establish the amount of income, deductions, credits or other matters required to be shown by such corporation in any return of such tax or information. The Tax Commissioner is authorized to prescribe the content and form of returns and statements and may require the inclusion in a return, document, or statement of any information he deems necessary for the proper enforcement of the West Virginia corporation income tax act.

(b) If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, then the computation of taxable income is made under such a method as, in the opinion of the Tax Commissioner, does clearly reflect income.

(c) Bookkeeping entries of themselves are not conclusive of the amount of income. The actual facts rather than the book entries control. Also, entries on another individual's books are not conclusive against a taxpayer.

(d) The books or records required by this section shall be kept at all times available for inspection by authorized representatives of the Tax Commissioner.

(e) The records required in this regulation shall be kept accurately, but no particular form is required for keeping the records. Such methods of accounting shall be used as will enable the Tax Commissioner to ascertain whether liability for tax has been incurred, and, if so, the correctness of the amounts required to be reported in any return of tax or information.

19.02. Notice by Tax Commissioner Requiring Returns, Statements, or the Keeping of Records.

(a) The Tax Commissioner may require any corporation, by notice served upon it, to make such returns, render such statements, furnish such copies of federal income tax returns and of federal audit determinations, or keep such specific records as the Tax Commissioner may deem necessary to verify whether or not such corporation is complying or has complied with applicable provisions of the West Virginia corporation income tax act.

(b) Every corporation which is required in these regulations or by instructions applicable to any form prescribed thereunder to keep a copy of any return, schedule, statement or other document, shall keep such copy as a part of its record.

(c) All records prescribed by these regulation shall be kept, by the corporation required to keep them at one or more convenient safe locations accessible to the authorized representatives of the Tax Commissioner, and shall at all times be available for inspection by such representatives.

(d) All corporations shall file a copy of page one of their federal corporation income tax return with their West Virginia annual income tax return.

Section 20. Report of Change in Federal Taxable Income.

20.01. If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within ninety (90) days after the final determination of such change, correction or renegotiation, or as otherwise required by the Tax Commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. When making such report, the taxpayer shall disclose to the Tax Commissioner the full particulars of such federal tax change or correction.

20.02. Any taxpayer who files an amended federal income tax return must also file within ninety (90) days thereafter an amended West Virginia income tax return, and shall in addition provide the Tax Commissioner such further information as he may require.

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PART III
PROCEDURE AND ADMINISTRATION

Section 26. General Provisions.

26.01. Investigations. The Tax Commissioner has the power to examine or cause to be examined by any agent, any books, papers, records, documents or memoranda for the purpose of determining the correctness of any return or for the purpose of making an estimate of any taxpayer's income. The Tax Commissioner also has power to require the attendance of the person rendering the return or the attendance of any other person having knowledge of the situation.

26.02. Returns by the Tax Department. If a corporation fails to file a return required by law, the Tax Department will proceed to make a return for such corporation from the best information available.

Section 27. Assessment and Deficiency Procedure.

27.01. Assessment of Deficiency. -- If the Tax Department believes that corporation income tax is insufficiently returned by a taxpayer either because the taxpayer has failed to promptly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, the Tax Department will proceed to investigate and determine or estimate the tax liability of the taxpayer and issue a "notice of assessment" against such taxpayer. Such notice of assessment shall be in writing.

27.02. Prior to giving a notice of assessment as provided in the preceding paragraph, the Tax Department will notify the taxpayer in writing, by certified mail, that it proposes to make such assessment and shall afford the taxpayer an opportunity to be heard with respect to the proposed assessment, either by the filing of a written protest against the proposed assessment or by informal conference or both.

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Section 28. Deficiency Procedure.

28.01. Written Protest or Petition for Reassessment.

(a) A taxpayer that receives a proposed assessment shall file a written protest within thirty (30) days after the receipt by the taxpayer of the notice of the proposed assessment. If the taxpayer fails to file such written notice within the thirty-day time period, the proposed assessment shall be conclusive.

(b) The petition for reassessment shall be in writing and shall be complete in itself so as to fully state the issues. No telegram, telephone call or similar communication will be recognized as a petition or as a written protest.

(c) The petition for reassessment shall contain (1) a statement of the amount of the deficiency or liability, as the case may be, determined by the Tax Department, the nature of the tax, the period for which determined; (2) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Tax Department in the determination of the deficiency. Each assignment of error shall be numbered; (3) clear and concise statements of facts upon which the petitioner relies as sustaining the assignments of error; (4) a prayer, setting forth the relief sought; (5) the signature of the petitioner; (6) a verification by the petitioner; (7) a copy of the proposed assessment shall be appended to the original of the petition.

28.02. Time and Place for Hearing. Hearings upon petitions for reassessment shall be held at the State Capitol in Charleston, West Virginia, unless good cause is shown for conducting the hearing elsewhere within this State.

28.03. Determination by the Tax Commissioner.

(a) After the hearing on a proposed assessment, the Tax Commissioner will give the taxpayer written notice of his determination. If the Tax Commissioner determines that any tax is due, he shall make a notice of assessment against the taxpayer as provided in section 27.01 of this rule.

(b) If the taxpayer fails to file a written protest when required to do so or if the taxpayer fails to request a hearing, or if the taxpayer having requested a hearing fails to appear, the Tax Commissioner will make a notice of assessment as provided in section 27.01 of this rule.

28.04. Hearings and Appeals.

(a) The petitioner may represent himself or be represented by some other person or persons of his choosing. A record of the hearing shall be made.

(b) Petitioner will be given an opportunity for argument within time limits fixed by the Tax Department following submission of evidence. The Tax Department will accept briefs in lieu of argument. Briefs must be filed timely within the period prescribed by the hearing examiner.

Section 28.04(c)

(c) An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the Circuit Court of Kanawha County, within ninety (90) days after he shall have received notice from the Tax Department of its determination.

Section 29. Collection.

29.01. The tax commissioner shall collect the taxes, additions to tax, interest and penalties imposed by the corporation net income tax statute. Every assessment made by the tax commissioner which has become final and is not subject to appeal by the taxpayer shall constitute a judgment and will be collected as judgments are collected.

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Section 32. Overpayments and Refunds.

32.01. In the case of any overpayment of the tax, additions to tax, interest or penalties imposed by the corporation net income tax act, the Tax Department shall refund the overpayment to the taxpayer. If an overpayment is not refunded within six months from the date the claim for refund is filed by the taxpayer, interest shall be paid upon the amount of such overpayment at the rate of six per centum per annum from the date of filing a claim for the refund.

32.02. A "claim for refund" or a "claim for overpayment" are those claims which are reflected and filed on the annual West Virginia corporation income tax return. In other words, if a corporation's annual return for the taxable year reflects an amount due the taxpayer, said return operates as a claim for overpayment.

32.03. Petitions for Refund. In the event that a claim for overpayment (as described in section 32.01 of this rule) is not refunded within six months after the filing of a claim, or in the event that such claim is denied by the Tax Department, the taxpayer may file a petition for refund pursuant to West Virginia Code ch. 11, art. 1, sec. 2a. Said petition shall set forth with particularity, in writing, all matters of fact and law on which the claim for refund is made. The petition shall set forth a statement of the amount of the refund, the period for which the refund is sought, the signature of the petitioner, a verification

by the petitioner, all documents and supporting evidences relative the petitioner's claim, et cetera.

32.04. Notwithstanding the limitations prescribed in ch. 11, art. 1, sec. 2a, a taxpayer may file a petition for refund, at the latest, within six months after a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income tax liability. In other words, a taxpayer has only six months after a final determination by the federal government of a federal overpayment in which to file a petition for refund with the State of West Virginia. A petition for refund which is filed after the six-month period will not be considered by the State Tax Department.

Section 33. Limitations on Assessments.

33.01. A notice of assessment for any deficiency in corporation income tax shall be issued by the Tax Department against the taxpayer within five years after the due date of the return. To illustrate: A corporation on a calendar year basis files its 1972 income tax return on March 15, 1973, (the due date). If the Tax Department disagrees with such return, it has until March 15, 1978, in which to propose an assessment against the corporation. The Tax Department need not actually issue a notice of assessment within the five-year period but need only issue a proposed assessment as described in §27.01 of these rules and regulations.

33.02. However, in the case of a false or fraudulent return filed with the intent to evade the tax or in case no return is filed by the taxpayer, the Tax Department may issue a proposed assessment, or a notice of assessment or bring a proceeding in court to collect such tax at any time.

33.03. The period of limitations on assessments shall not expire until ninety (90) days after the Tax Department is advised by the taxpayer of a final determination by the United States Internal Revenue Service in the taxpayer's federal income tax liability. If a final determination is made by the Internal Revenue Service in the taxpayer's federal income tax liability and such taxpayer fails to notify the Tax Department of such

determination, the proposed assessment or notice of assessment
can be made at any time.

SECTION 34 RESERVED FOR FUTURE USE.

Section 35. Interest.

35.01. All corporation income taxes, if not paid when due, shall bear interest at the rate of six per centum per annum from the due date of the return. The imposition of such interest is mandatory and the Tax Department has no authority to waive interest.

Section 36. Additions to Tax.

36.01. If any taxpayer fails to make or file a corporation income return or files its return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of unpaid tax, from the date such tax should have been paid, additions to tax of five per centum if the failure is not for more than thirty (30) days with an additional five per centum for each additional thirty days or fraction thereof during which the failure shall continue not to exceed twenty-five per centum in the aggregate. Interest will also be imposed against the delinquent taxpayer.

36.02. However, the Tax Commissioner may waive additions to tax upon a showing of reasonable cause by the taxpayer for its delinquency. Reasonable cause must be affirmatively pleaded, in writing, by the taxpayer and it must set forth in detail the reasons for its delinquency or failure. The Tax Commissioner's waiver will be in writing.

(a) Financial hardship, such as a lack of funds at the time the return was due, does not qualify as reasonable cause. Also, the past filing history of a taxpayer is not relevant when considering the issue of reasonable cause for a present delinquency. The fact that the taxpayer, in the past, filed all returns and paid all taxes timely is immaterial to the issue at hand.

(b) Reasonable cause does exist for late filing where the taxpayer, because of circumstances beyond his control, is prevented from filing timely. This results when natural disasters such as floods and fires occur.

Section 37. Penalties.

37.01. Any person who willfully fails to truthfully account for and pay over any tax, and any person who willfully attempts in any manner to evade or defeat the corporation income tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a money penalty equal to the total amount evaded, or not collected, or not accounted for and paid over. This penalty shall be in lieu of the additions to tax set forth in section 36. of this rule.

37.02. The term "person" as used in this subsection includes, but is not limited to, an officer or employee of a corporation, who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurred.

State Tax Department
Leg. Reg. 11-10
Series XXIV

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XXIV
(1973)

Subject: Corporation Net Income Tax

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