WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

CITE AUTHORITY W. VA. CODE § 11-10-5

AMENDMENT TO AN EXISTING RULE: YES___ NO_X_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: CORPORATION NET INCOME TAX

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

ALAN L. MIERKE
ACTING TAX COMMISSIONER

State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Charleston 25305

L. FREDERICK WILLIAMS, JR.
SECRETARY

CONSENT TO FILE RULE

January 9, 1992

To Whom It May Concern:

Title of Rule: Corporation Net Income Tax

Title Number: 110

Series Number: 24

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 9th day of January, 1992.

James H. Paige, III
Secretary, Tax and Revenue

FILED

MODIFIED
WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 24
1991

CORPORATION NET INCOME TAX

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§ 110-24-1. General.

1.1 **Scope.** - These legislative regulations are intended to explain and clarify the West Virginia Corporation Net Income Tax as set forth in W. Va. Code § 11-24-1 **et seq.** This rule repeals and replaces all prior Corporation Net Income Tax regulations.

1.2 **Authority.** - These legislative regulations are issued under authority of W. Va. Code § 29A-3-1 **et seq.** and W. Va. Code § 11-10-5.

§ 110-24-2. Introductory Statement. - The West Virginia Corporation Net Income Tax became effective July 1, 1967, and is a conformity tax in that it utilizes federal taxable income as a starting point to determine West Virginia taxable income and in that it adopts federal definitions wherever possible. Although the West Virginia Corporation Net Income Tax is not a unitary tax, it does, in many aspects resemble a modified waters edge unitary tax, with a throwout rather than a throwback rule.

A throwout rule eliminates from the denominator of the sales factor all destination sales to those states in which the taxpayer transacts no business, sales to those states where no business is subject to a corporation income tax, or where the destination state lacks jurisdiction to impose a corporation net income tax, irrespective of whether such state does or does not impose such tax. The West Virginia Corporation Net Income Tax recently switched from a throwback rule to a throwout rule.

West Virginia's jurisdiction to impose the Corporation Net Income Tax has been somewhat limited by Public Law 86-272 [15 USC § 381 1a]. Under Public Law 86-272, certain activities by a corporation in this State are exempt from net income taxation. These activities include: activity in the State by employees soliciting orders where the employees have no authority to accept the orders; activities by employees displaying or promoting goods in this State without soliciting or taking orders; solicitation activities by nonemployee representatives conducted through an office or other business location in this State; and mere delivery of goods in this State by company-operated vehicles. These activities are protected regardless of how frequently they occur.

The overall scheme of the West Virginia Corporation Net Income Tax is predicated upon a corporation's federal taxable income. The Corporation Net Income Tax begins with federal taxable income, and makes certain increasing or

decreasing adjustments, or both, as applicable. A West Virginia corporation transacting business only in West Virginia will have obtained West Virginia taxable income at this point. A corporation transacting business partially within this State and partially outside this State must take a further step to arrive at West Virginia taxable income: allocation and apportionment.

After adjusting, allocating and apportioning federal taxable income to obtain West Virginia taxable income, a tentative tax liability is computed. Various tax credits are applied to this to determine ultimate tax liability.

§ 110-24-3. Definitions.

3.1 **Meaning of terms - general rule.** - Any term used in West Virginia Code § 11-24-1 **et seq.**, and in these regulations have the same meaning as when used in a comparable context in the laws of the United States of America, as those laws relate to federal income taxation, unless a different meaning is clearly required by the context or by specific definition in article twenty-four, or in these regulations.

3.1.1 Any reference in article twenty-four, and in these regulations, to the laws of the United States means the provisions of the Internal Revenue Code, as amended, and such other provisions of the laws of the United States of America as those laws relate to the determination of income for federal income tax purposes. Refer to W. Va. Code § 11-24-3 for the most recent updating of terms used in article twenty-four.

3.1.2 The term "Internal Revenue Code" means the Internal Revenue Code of the United States of America as enacted and amended from time to time by the Congress of these United States and signed into law by the President of these United States, or that otherwise becomes law.

3.1.2.1 **Example.** - If on September 18, 1988, the United States Congress enacts a statutory provision making religious groups subject to the federal income tax, the law will have no effect on the West Virginia Corporation Net Income Tax for the 1988 tax year, or subsequent tax years, until such time as the West Virginia Legislature enacts a law updating the terms used in the West Virginia Corporation Net Income Tax to have the same meaning as those used in the Internal Revenue Code through the first day of January, 1989.

~~3.2~~ § 110-24-3a. **Specific Terms Defined.** - For purposes of these regulations and for the purposes of the West Virginia Corporation Net Income Tax:

~~3.2.1~~ 3a.1 The term "business income" means income arising from transactions and activity in the regular course of a taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of ~~a~~ the taxpayer's regular trade or business operations.

~~3.2.1.1~~ 3a.1.1 **Example.** - Alpha Corporation is in the cable television business. In tax year 1989, Alpha Corporation liquidates one of its subsidiaries. Any income recognized for federal income tax purposes that results solely from the liquidation of the subsidiary will not be business income.

~~3.2.2~~ 3a.2 The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed; **Provided**, That the commercial domicile of a financial organization, which is subject to regulation as such, shall be at the place designated as its principal office with its regulating authority.

~~3.2.3~~ 3a.3 The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services unless excluded from such employees' taxable income under the Internal Revenue Code, such as, certain fringe benefits.

~~3.2.4~~ 3a.4 The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under federal income tax law.

~~3.2.5~~ 3a.5 The term "delegate," as used in the phrase "or his delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in ~~Article twenty-four, Chapter eleven of the West Virginia Code~~ W. Va. Code § 11-24-1 et seq. or in these regulations.

~~3.2.6~~ 3a.6 The term "domestic corporation" means any corporation organized under the laws of the State of West Virginia, or chartered by the Secretary of State of West Virginia, and certain corporations organized or incorporated under the laws of the State of Virginia if, but only if, such corporations were chartered or organized under the laws of Virginia prior to the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

~~3.2.7~~ 3a.7 The term "engaging in business" or "doing business" means any activity of a corporation which enjoys the benefits and protection of government and laws in this State. ~~, except for merely registering with the Secretary of State to do business in this State.~~

~~3.2.8~~ 3a.8 The term "Federal Form 1120" means the annual federal income tax return of any corporation made pursuant to ~~Subchapter C of~~ the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the Internal Revenue Service, or successor agency thereto. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means it pro forma Federal Form 1120.

~~3.2.9~~ 3a.9 The term "fiduciary" means any person or entity acting in a fiduciary capacity for any other person or entity, and includes a guardian, trustee, executor, administrator, receiver, conservator, but does not include officers, directors, attorneys, real estate brokers or certified public accountants to the extent these do not act as a guardian, trustee, executor, administrator, receiver or conservator.

3a.10 The term "financial organization" means:

3a.10.1 A holding company or a subsidiary thereof. As used in this section "holding company" means a corporation registered under the Federal Bank Holding Company Act of 1956 or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in Section 408(a)(1)(F) of the Federal National Housing Act (12 U.S.C. 1730(a)(1)(F));

3a.10.2 A regulated financial corporation or a subsidiary thereof. As used in these regulations "regulated financial corporation" means:

3a.10.2.1 An institution, the deposits, shares or accounts of which are insured under the Federal Deposit Insurance Act, or by the Federal Savings and Loan Insurance Corporation;

3a.10.2.2 An institution that is a member of a Federal Home Loan Bank;

3a.10.2.3 Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

3a.10.2.4 A credit union incorporated and organized under the laws of this State;

3a.10.2.5 A production credit association organized under 12 U.S.C. 2071;

3a.10.2.6 A corporation organized under 12 U.S.C. 611 through 631 (an Edge Act corporation); or

3a.10.2.7 A federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101); or

3a.10.3 A corporation which derives more than 50% of its gross business income from one or more of the following activities:

3a.10.3.1 Making, acquiring, selling or servicing loans or extensions of credit. Loans and extensions of credit include:

3a.10.3.1.a Secured or unsecured consumer loans;

3a.10.3.1.b Installment obligations;

3a.10.3.1.c Mortgages or other loans secured by real estate or tangible personal property;

3a.10.3.1.d Credit card loans;

3a.10.3.1.e Secured and unsecured commercial loans of any type; and

3a.10.3.1.f Loans arising in factoring.

3a.10.3.2 Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit (as defined by the Federal Reserve Board in 12 C.F.R. 225.25(b)(5)).

3a.10.3.3 Operating a credit card business.

3a.10.3.4 Rendering estate or trust services.

3a.10.3.5 Receiving, maintaining or otherwise handling deposits.

3a.10.3.6 Engaging in any other activity with an economic effect comparable to those activities described in Section 3a.10.3.1 through 3a.10.3.5 and the subsections thereof of these regulations.

~~3.2.10~~ 3a.11 The term "fiscal year" means an accounting period of substantially twelve months ending on any day other than the last day of December, or a short taxable year ending on any day other than the last day of December, and on the basis of which period or short taxable year a taxpayer is required to report for federal income tax purposes.

~~3.2.11~~ 3a.12 The term "foreign income" means income not derived from sources within the United States and its territories.

~~3.2.12~~ 3a.13 The term "foreign expense or expenses" means expense or expenses incurred outside of the United States and its territories.

~~3.2.13~~ 3a.14 The term "includes and including" when used within a definition contained in ~~Article twenty-four Chapter eleven~~ W. Va. Code § 11-24-1 et seq. ~~of the West Virginia Code~~ or in these regulations does not exclude things otherwise within the meaning of the term being defined.

~~3.2.14~~ 3a.15 The term "nonbusiness income" means all income other than business income.

~~3.2.15~~ 3a.16 The term "person" is interchangeable with the term "corporation."

~~3.2.16~~ 3a.17 The term "pro forma return" means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an affiliated group.

~~3.2.17~~ 3a.18 The term "public utility" means any business activity to which the jurisdiction of the Public Service Commission of West Virginia extends.

~~3.2.18~~ 3a.19 The term "sales" means all gross receipts of the taxpayer that are business income.

~~3.2.19~~ 3a.20 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.

~~3.2.20~~ 3a.21 The term "short period" or "short taxable year" means any period of less than twelve months for which the taxpayer filed a federal return.

~~3.2.21~~ 3a.22 The term "taxable year" means the taxable year or taxable period for which the taxable income is computed under federal income tax law.

~~3.2.22~~ 3a.23 The term "tax" includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

~~3.2.23~~ 3a.24 The term "Tax Commissioner" means the Tax Commissioner of the State of West Virginia, or his or her delegate.

~~3.2.24~~ 3a.25 The term "taxpayer" means a corporation subject to the tax imposed by ~~Article twenty-four of Chapter eleven of the Code of West Virginia~~ W. Va. Code § 11-24-1 et seq.

~~3.2.25~~ 3a.26 The term "this code" means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

~~3.2.26~~ 3a.27 The term "this State" means the State of West Virginia.

~~3.2.27~~ 3a.28 The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, including all elections made under such laws, so as to be the actual taxable income as filed for federal income tax purposes, adjusted, as provided in West Virginia Code § 11-24-6. In the case of a corporation having income from business activity or activities that are taxable by another state or states, its West Virginia taxable income shall be the portion of taxable income as defined and adjusted and as allocated or apportioned to this State under West Virginia Code §§ 11-24-7, 7a or 7b, as appropriate.

§ 110-24-4. Imposition Of Tax.

4.1 For taxable periods beginning after the first day of July, one thousand nine hundred eighty-seven, a tax is imposed by W. Va. Code § 11-24-1 et

seq. for each taxable year upon the West Virginia taxable income of every domestic or foreign corporation engaging in business in this State or deriving income from property, activity or other sources in this State, except corporations exempt under West Virginia Code § 11-24-5, at the rate of nine and three-quarters percent. Beginning the first day of July, one thousand nine hundred eighty-eight, and on each first day of July thereafter for four successive years, the rate shall be reduced by fifteen one hundredths of one percent per year, with such rate to be nine percent on and after the first day of July, one thousand nine hundred ninety-two.

§ 110-24-4a. Effect Of Rate Changes During Taxable Year.

4a.1 If any rate of tax imposed in W. Va. Code § 11-24-1 **et seq.** changes to become effective before the thirty-first day of December of a calendar year, and if the taxable year included the effective date for the change of rate, then:

4a.1.1 Tentative tax due is computed by applying the rate for the period before the effective date of the change of rate, and the rate for the period on and after such date, to the taxable income of the corporation for the entire taxable year; and

4a.1.2 The tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of months in each period bears to the number of months in the entire taxable year.

4a.1.3 The above procedure may only be used when the date of the rate change is other than the first day of the taxable year.

4a.2 For purposes of this Section:

4a.2.1 If the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

4a.2.2 If a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date for the change of rate.

4a.3 **Example.** - The West Virginia Legislature enacts a rate change for the corporation net income tax beginning after June 30. The corporation net income tax liability for a calendar year taxpayer is calculated by applying the former rate for the months January through June, and the new rate for July and succeeding months. A fiscal year taxpayer would use the former rate for those periods of its tax year occurring before June 30.

§ 110-24-5. Corporations Exempt From Tax.

5.1 The following corporations shall be exempt from the tax imposed by W. Va. Code § 11-24-1 **et seq.** to the extent provided herein:

5.1.1 Corporations which by reason of their purposes or activities are exempt from federal income tax.

5.1.1.1 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.

5.1.1.2 **Example.** - A corporation exempt from federal income taxation under IRC § 501(c)(3) receives $1,000,000 in cash donations and is bequeathed an unrelated business during the year. The tax exempt corporation operates the business for the remainder of its tax year. The income from operating this business is deemed unrelated business taxable income by the Internal Revenue Service. Such income would also be taxed under the West Virginia Corporation Net Income Tax. However, the donations would be exempt.

5.1.2 Insurance companies which pay this State a tax upon premiums.

5.1.2.1 This exemption is available if an insurance company actually paid the premium tax set forth in W. Va. Code § 33-3-1 **et seq.** for any year in which an exemption is claimed or would have paid the premium tax but for the utilization by the taxpayer of any tax credits allowed or allowable against the premium tax.

5.1.3 Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933." This exemption does not apply to any cooperative corporations or associations organized under the provisions of W. Va. Code § 19-4-1 **et seq.**

5.1.4 Corporations having in place a valid election to be taxed under Subchapter S of the Internal Revenue Code.

5.1.4.1 Such corporations must file the information return required in West Virginia Code § 11-24-13b.

5.1.5 Trusts established pursuant to 29 U.S.C. § 186 (enacted as Section three hundred two(c) of the labor management relations act), as amended prior to the first day of January, 1967.

5.1.6 Corporations otherwise exempted from the corporation net income tax by law, e.g. racing associations, W. Va. Code § 19-23-12; Hospital service corporations, W. Va. Code § 33-24-4; credit unions, W. Va. Code § 31-10-33; farmer's mutual fire insurance companies, W. Va. Code § 33-22-16; fraternal benefit societies, W. Va. Code § 33-23-29.

§ 110-24-6. Adjustments In Determining West Virginia Taxable Income.

6.1 **General.** - The West Virginia corporation net income tax is, as the name implies, a net income tax. Therefore, certain decreasing and increasing adjustments are made to a corporation's gross revenues to arrive at taxable income for the purposes of the West Virginia Corporation Net Income Tax. In

addition, the West Virginia Corporation Net Income Tax is a conformity statute in that it utilizes federal taxable income as a starting point to determine West Virginia taxable income. A corporation's federal taxable income shall be adjusted as described in West Virginia Code § 11-24-6 and in this Section prior to being allocated and apportioned pursuant to West Virginia Code § 11-24-7. A corporation transacting all of its business within West Virginia for an entire taxable year will not apportion or allocate its income. The income of such a corporation will be adjusted under W. Va. Code § 11-24-6.

6.2 **Adjustments increasing federal taxable income.**

6.2.1 The following increasing adjustments shall be made to a corporation's federal taxable income to the extent that any of the items are not already reflected therein:

6.2.2 Interest or dividends on obligations or securities of any state, political subdivision or authority thereof.

6.2.3 Interest or dividends (less related expenses to the extent not deducted in determining federal taxable 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.

6.2.4 Income taxes and other taxes, including franchise and excise taxes which are based on, measured by, or computed with reference to net income, imposed by this State or any other taxing jurisdiction, to the extent deducted in determining federal taxable income.

6.2.5 Any taxes imposed by this State for which credit against the West Virginia Corporation Net Income Tax is allowed pursuant to Article 24, Chapter ~~eleven~~ 11 of the Code of West Virginia and actually deducted by the taxpayer in determining federal taxable income.

6.2.6 The amount of any unrelated business income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, of those corporations which by reason of its purposes is generally exempt from federal income taxes.

6.2.7 The amount of any net operating loss deduction taken for federal income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended.

6.2.8 **Example.** - A West Virginia corporation has the following items of income: interest from bonds issued by the Commonwealth of Pennsylvania, interest on bonds issued by the City of Parkersburg, West Virginia and a federal net operating loss deduction of $5,000.

The corporation, in determining its federal taxable income, deducted the amount of interest received from the bonds issued by the Commonwealth of

Pennsylvania, the interest received from the bonds issued by the City of Parkersburg and the net operating loss deduction.

The following adjustments increasing federal taxable income are necessary to arrive at the corporation's West Virginia taxable income. Each increasing adjustment shall be in an amount equal to the amount deducted in determining federal taxable income. There shall be added to federal taxable income as an adjustment increasing federal taxable income, to the extent the same was deducted in arriving at federal taxable income: the interest received from the Commonwealth of Pennsylvania and from the City of Parkersburg, and the amount taken as a net operating loss deduction.

6.3 **Adjustments decreasing federal taxable income.**

6.3.1 The following decreasing adjustments shall be made to a corporation's federal taxable income to the extent the same is included therein:

6.3.2 The gain from the sale or other disposition of any property having a higher fair market value on July 1, 1967, than the adjusted basis of that property at said date for federal income tax purposes.

6.3.2.1 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 of the property on July 1, 1967, and the adjusted basis of that property on said date.

6.3.2.2 **Example.** - On July 1, 1967 the fair market value of an item of personal property owned by a corporation is $1,000, and the corporation's adjusted basis in that property as of July 1, 1967 is $500. This property is sold by the corporation on December 31, 1989 for $600 when the adjusted basis on the property is zero. The corporation is entitled to a decreasing modification of $500 on its West Virginia tax return for the 1989 tax year.

6.3.3 The amount of any refund or credit for overpayment of income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this State or any other taxing jurisdiction, to the extent actually included in gross income for federal income tax purposes.

6.3.3.1 The refund or credit for overpayment of these taxes must have been included by the corporation in its federal taxable income for the taxable year.

6.3.4 The amount added to federal taxable income for the taxable year due to the elimination of the reserve method for computation of the bad debt deduction.

6.3.5 The full amount of interest expense actually disallowed in determining federal taxable income which was incurred or continued to purchase

or carry obligations or securities of any state or any political subdivision thereof.

6.3.5.1 This decreasing modification is limited to the interest expense actually disallowed and is made because the income from the obligations or securities is an increasing modification to federal taxable income.

6.3.6 The amount required to be added to federal taxable income as a dividend received from a foreign corporation under Section 78 of the Internal Revenue Code of 1986, as amended, by a corporation electing to take the foreign tax credit for federal income tax purposes.

6.3.6.1 For purposes of this decreasing modification, a foreign corporation is a corporation not chartered in the United States or its territories.

6.3.7 The amount of salary expenses disallowed as a deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51 of the Internal Revenue Code of 1986, as amended.

6.3.8 The amount included in federal adjusted gross income by the operation of Section 951 of the Internal Revenue Code of 1986, as amended.

6.3.9 Any amount included in federal adjusted gross income which is foreign source income.

6.3.9.1 Foreign source income includes:

6.3.9.1.a Interest and dividends not derived from sources within the United States.

6.3.9.1.b Rents, royalties, license and technical fees from property located outside the United States or from services performed outside the United States, or from any interest in such property, including rents, royalties, or fees for the use or the privilege of using any patents, copyrights, secret process and formulas, goodwill, trademarks, trade brands, franchises and other like property outside of the United States.

6.3.9.1.c Gains, profits or other income from the sale of intangible or real property located outside of the United States.

6.3.9.1.d The provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended, and of the applicable regulations thereto shall be applied to determine the source of "foreign source" income.

6.4 **Net operating loss deductions.** - Except as otherwise provided, there is allowed as a deduction for the taxable year an amount equal to the aggregate of the West Virginia net operating loss carryovers to such year plus the net operating loss carrybacks to such year.

6.4.1 A net operating loss deduction is the loss allowed by West Virginia Code § 11-24-6 as determined in accordance with Section 172 of the Internal Revenue Code of 1986, as amended.

6.4.2 **Special rules.**

6.4.2.1 The West Virginia net operating loss deduction shall be made after the allocation and apportionment, if any, of federal taxable income in accordance with West Virginia Code § 11-24-7, 7a or 7b, as appropriate.

6.4.3 For tax years ending prior to July 1, 1988, no net operating loss shall be allowed, and no net operating loss carryforward or carryback shall arise from any such year unless a federal net operating loss as reported for federal income tax purposes existed for such years. Such loss shall be available for purposes of the West Virginia corporation net income tax only after adjustment in accordance with the requirements of W. Va. Code § 11-24-6, as in effect on January 1, 1988.

6.5 Special adjustments for expenditures for water and air pollution control facilities.

6.5.1 **Taxpayer election.**

6.5.1.1 A corporate taxpayer may elect to make a decreasing modification to its federal taxable income for certain expenditures for water and air pollution control facilities. This election shall be made on the tax return filed for the tax year in which the expenditures were made.

6.5.1.1.a The election, once made, is irrevocable as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility, whether paid in a single year or paid over several years.

6.5.2 If the taxpayer makes the election under this Section, there shall be subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this State for water pollution control facilities or air pollution control facilities as defined in Section 169 of the Internal Revenue Code, and added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities or air pollution control facilities, to the extent deducted in determining federal taxable income.

6.5.3 If a taxpayer's federal taxable income is subject to allocation and apportionment under West Virginia Code § 11-24-7, the adjustments made pursuant to the election herein shall be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this State in accordance with W. Va. Code § 11-24-7, instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof.

6.6 Allowance for certain government obligations and obligations secured by residential property.

6.6.1. **General.** - The West Virginia taxable income of a taxpayer subject to the West Virginia Corporation Net Income Tax as adjusted in accordance with Subsections (b), (c), (d) and (e) of West Virginia Code § 11-24-6 is to be further adjusted by multiplying the taxable income after the above adjustments have been made by a fraction equal to one minus a fraction:

6.6.2. The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year of the following:

6.6.2.1. Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy.

6.6.2.2 Obligations of this State and any political subdivision or authority thereof.

6.6.2.3 Investments or loans primarily secured by mortgages or deeds of trust on residential property located in this State and occupied by nontransients.

6.6.2.4 Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide trailer or mobile home, located in this State and occupied by nontransients.

6.6.2.5 The account balances in any of the above types of accounts shall be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of Federal Form 1120 or its successor.

6.6.3 The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown for the taxable year on Schedule L of Federal Form 1120, filed by the taxpayer with the Internal Revenue Service.

§ 110-24-7. Allocation And Apportionment.

7.1 **General.** - Any taxpayer having income from business activity which is taxable both in this State and in another state shall allocate and apportion its net income as provided herein.

7.1.1 For purposes of this Section and West Virginia Code § 11-24-7, the term "net income" means the taxpayer's federal taxable income as adjusted by the provisions of W. Va. Code § 11-24-6.

7.2 **"Taxable in another state" defined.** - For purposes of this Section and W. Va. Code § 11-24-7, a taxpayer is taxable in another state if:

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

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

7.3 **Business activities entirely within West Virginia.** - If the business activities of a taxpayer take place entirely within the State of West Virginia, the entire net income of such a taxpayer is subject to the West Virginia Corporation Net Income Tax. The business activities of a taxpayer are deemed to have taken place entirely within this State if a taxpayer is not taxable in another state: **Provided,** That the business activities of a financial organization having its commercial domicile in this State shall be deemed to take place entirely in this State, notwithstanding that such organization may be "taxable in another state:" **Provided, however,** That the income from the business activities of a financial organization not having its commercial domicile in this State shall be apportioned according to the applicable provisions of W. Va. Code 11-24-1 et seq.

7.4 **Business activities partially within and partially without West Virginia; allocation of certain specified forms of non-business income.** - If a taxpayer's business activities take place partially within this State and partially outside of this State, and that taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided below.

7.4.1 **"Business income" defined.** - The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations. See Section 3a.1 of these regulations.

7.4.2 **"Nonbusiness income" defined.** - The term nonbusiness income means all income other than business income. See Section 3a.13 of these regulations.

7.4.3 **Net rents and royalties constituting nonbusiness income.**

7.4.3.1 Net rents and royalties from real property located in this State are allocable to this State.

7.4.3.1.a Items of income "allocable or allocated to this State" means that particular item of income is fully subjected to the corporation net income tax in this State.

7.4.3.2 Net rents and royalties from tangible personal property are allocable to this State:

7.4.3.2.a If and to the extent that property is utilized in this State ~~then net income from tangible personal property used in this State is subject to the West Virginia Corporation Net Income Tax;~~ or

7.4.3.2.b ~~If~~ In their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized, ~~then net income from the utilization of tangible personal property is subject to the West Virginia Corporation Net Income Tax.~~

7.4.3.2.c The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession. If the property is in this State for any part of a day, that time shall be counted as a full day.

~~7.4.3.2.c~~ 7.4.3.2.d Examples.

~~7.4.3.2.c.1~~ 7.4.3.2.d.1 Corporation A was formed in Ohio and has its main offices there. Corporation A owns an apartment complex in West Virginia and leases computers to users located in West Virginia. The net rental income from the rental of the apartment complex is allocated to West Virginia for purposes of the West Virginia Corporation Net Income Tax. Likewise, the net rental income received by Corporation A as a lessor of computers in this State is allocated to this State.

~~7.4.3.2.c.2~~ 7.4.3.2.d.2 Corporation Z was formed in State X and has its commercial domicile in the State of West Virginia. Corporation Z leases tangible personal property to customers in State K, which has no corporation net income tax. The net receipts from leasing tangible personal property in State K are allocated entirely to the State of West Virginia.

~~7.4.4 The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the State of West Virginia during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of~~

~~the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is deemed to be utilized in the state in which the property was located at the time the rental or royalty payer obtained possession. If the property is in this State for any part of a day, that time shall be counted as a full day.~~

~~7.4.5~~ 7.4.4 Examples.

~~7.4.5.1~~ 7.4.4.1 Corporation Alpha, organized and headquartered in California, leases coal mining equipment in West Virginia. Alpha began leasing equipment in West Virginia on April 1, and is a calendar year taxpayer. The coal mining equipment was not in this State until April 1, the date the lease commenced. The property is leased in this State for 275 of the 365 days in the year. If Alpha Corporation netted $15,000 for leasing this equipment for the entire year, Alpha would include in West Virginia income the following amount: 275/365 x $15,000 = $11,301.37.

~~7.4.5.1.a~~ 7.4.4.1.a If Alpha Corporation has adequate records to show the net rental income from the equipment while the equipment was leased in this State, then it may use such actual net rental income and not "apportion" its allocation of net rental income.

~~7.4.6 For purposes of allocation, the term "net income" includes "net loss."~~

7.5 Capital gains.

7.5.1 Capital gains and losses from sales of real property located in this State are allocable to this State.

7.5.2 Capital gains and losses from sales of tangible personal property are allocable to this State if the property was located or was situated in this State at the time it was sold or the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state where the property that was sold had a situs.

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

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

7.6 Interest and dividends.

7.6.1 Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

7.6.1.1 "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

7.7 **Patent and copyright royalties.**

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

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

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

7.8 **Corporate partner's distributive share.**

7.8.1 A corporation carrying on business through a partnership, as defined in Section 761 of the Internal Revenue Code of 1986, as amended, is liable for income tax only in its separate or individual capacity. In this regard, a corporate partner is treated no differently than any other partner. A corporation may be a limited partner or a general partner and is treated no differently than any other limited partner or general partner, as the case may be.

7.8.1.1 **Example.** - Gomer Corporation was organized under the laws of Idaho and has its commercial domicile there. Gomer Corporation invests in a royalty interest in a West Virginia oil and gas partnership as a limited partner. As a limited partner, Gomer Corporation is merely a passive investor. Gomer Corporation has no other contacts with this State, and is not engaged anywhere else in the oil and gas business. Gomer Corporation is required to file a West Virginia Corporation Net Income Tax Return for its taxable year for its distributive share of gains and losses, as provided below. The entire distributive share Gomer Corporation receives from the West Virginia oil and gas partnership is allocated to this State. The reason for this is that the income from the oil and gas limited partnership is nonbusiness income to Gomer Corporation and it is also a royalty interest and therefore is the type of nonbusiness income that is allocated. The distributive share is treated as if Gomer Corporation held the royalty interest directly.

7.8.2 A corporate partner's distributive share of income, gain, loss, deduction or credit of a partnership shall be modified as provided in West Virginia Code § 11-24-6. This modification shall be made for each partnership in which a corporation is a partner. Such distributive share shall then be allocated and apportioned as provided in W. Va. Code § 11-24-7, using the corporation's proportionate share of the partnership's property, payroll and sales factors. The sum of that portion of the distributive share allocated and apportioned to this State shall then be treated as distributive share allocated to this State. That portion of distributive share allocated or apportioned outside this State shall be treated as distributive share allocated outside this State, unless the taxpayer requests different treatment and its request is granted, or the State Tax Commissioner requires different treatment of the distributive share pursuant to Subsection-h of W. Va. Code § 11-24-7.

7.8.2.1 **Example.** - Mort-Le-Tool, Inc. is a Delaware Corporation engaged in the business of manufacturing rotund tools. Mort-Le-Tool, Inc. has its commercial domicile in Pennsylvania. The management of Mort-Le-Tool, Inc. has invested certain reserve capital in a West Virginia oil and gas limited partnership with wells only in West Virginia and in a syndicated real estate limited partnership that owns and operates shopping centers and malls in four states, including West Virginia. Mort-Le-Tool, Inc. does no business in West Virginia. Both partnerships make distributions to their respective partners. Mort-Le-Tool, Inc. is required to file a West Virginia Corporation Net Income Tax Return for the taxable year in which it received the distributions. The pass through amounts received by the corporation from its West Virginia oil and gas partnership interest is nonbusiness income. ~~The oil and gas partnership will apportion its income according to its source or by the apportionment method set forth in W. Va. Code § 11-23-5, which provides allocation and apportionment for partnerships for the business franchise tax.~~ In this example, ~~either method will result in the~~ income ~~being~~ is allocated entirely to West Virginia since the oil and gas wells are located in this State and the oil and gas partnership has no income from any other state. Since the oil and gas income was allocated to this State at the partnership level, that allocation will flow through along with the corporate partner's distributive share which will thereby be allocated entirely to the State of West Virginia as well. All income allocated to West Virginia at the partnership level will automatically be allocated to this State by operation of W. Va. Code § 11-24-7(d)(5)(3). The same result would apply to the partners' distributive income share without regard to whether actual distribution of that income to the partners were made during the taxable year.

Mort-Le-Tool, Inc.'s distributive share of the real estate partnership will be calculated the same way. First the partnership will allocate and apportion the income received from the operations in the four states where it is doing business. All rents received by the partnership from property located in West Virginia will flow through to the corporation as if it held the real property itself. Since the rents so received by Mort-Le-Tool, Inc. are nonbusiness income to that corporation, these amounts are allocated entirely to this State. The rental income flowing through to the corporation from the real estate partnership that was derived from real property located in other states will be apportioned by Mort-Le-Tool, Inc., to the extent such income is not allocable to the state from which it was derived, as set forth in W. Va. Code § 11-24-7,

using the corporation's proportionate share of the partnership's payroll, property and sales factors. The sum of that part of the distributive share allocated and apportioned to this State is the corporation's distributive share of income from the real estate partnership allocated to West Virginia.

7.9 Business activities partially within and partially without this State.

7.10 Where a corporation has income from business activities partially within this State and partially outside of this State, all net income, after deducting those items specifically allocated under W. Va. Code § 11-24-7(d), shall be apportioned to this State by multiplying such net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four, reduced by the number of factors, if any, having no denominator except if the sales factor has a denominator of zero, the denominator of the apportionment fraction shall be reduced by two.

7.10.1 **Example.** - Pro Inc. is a service corporation doing business in several states, including West Virginia. Pro Inc. owns no property anywhere. In this case, the allocation formula for Pro Inc. will be:

$$\frac{\frac{\text{WV Payroll}}{\text{Total Payroll}} + 2\left(\frac{\text{WV Sales}}{\text{Total Sales}}\right) + \frac{\text{0 WV Property}}{\text{0 total Property}}}{3}$$

If, for some unusual reason, a corporation has no sales anywhere, then since the sales factor is double weighted, the overall denominator would be reduced by 2.

7.10.2 "Business activities" include all activities engaged in by the corporation, and includes those activities giving rise to both business income and nonbusiness income.

7.10.3 All income of a corporation, including both business income and nonbusiness income, is apportioned, except those types of nonbusiness income specifically set forth in W. Va. Code § 11-24-7(d), which is allocated.

7.10.3.1 The types of nonbusiness income that are allocated are net rents and royalties; capital gains; interest and dividends; patent and copyright royalties; and the distributive share of a corporate partner.

7.10.3.2 All other nonbusiness income and all business income shall be apportioned.

7.10.4 Where a corporation has business activities that are in West Virginia and other states, its other net nonbusiness income that was not allocated under W. Va. Code § 11-24-7(d) and all of its net business income will be apportioned through the following fraction:

$$\text{Apportionable income} \times \frac{\text{Property factor + payroll factor + (sales factor x 2)}}{4}$$

Where:

$$\text{property factor} = \frac{\text{taxpayer's WV property}}{\text{all of taxpayer's property}}$$

$$\text{payroll factor} = \frac{\text{taxpayer's compensation expense for WV}}{\text{taxpayer's total compensation expenses}}$$

$$\text{sales factor} = \frac{\text{taxpayer's WV sales}}{\text{taxpayer's total sales}}$$

7.10.4.1 In performing this calculation, the following rules shall be followed.

7.10.4.1.a Where any fraction has a numerator of zero and a denominator of other than zero, the fraction shall be reduced to, and shall equal zero, i.e. 0/100 = 0.

7.10.4.1.b Where any fraction has a denominator of zero, further calculation is impossible. If one or more factors has a zero denominator, the apportionment fraction denominator, which is typically four, shall be decreased by one for each such zero denominator fraction, except that if the sales factor denominator is zero, the apportionment fraction denominator shall be decreased by two.

7.10.4.2 The apportionment factor may therefore be stated as follows:

$$\text{WV Taxable Income} = \text{Apportionable Income} \times \frac{\left(\frac{\text{WV Prop.}}{\text{All Prop.}} + \frac{\text{WV Payroll}}{\text{Total Payroll}} + 2\left[\frac{\text{WV Sales}}{\text{All Sales}}\right]\right)}{4} + \text{Allocated income}$$

7.10.4.3 **Example.** - General Con Corporation, a New York Corporation sends agents into the State of West Virginia to sell a new process guaranteed to make things opaque. General Con Corporation has no property located or used in this State, however, its total property holdings are $10,000,000. The West Virginia sales of General Con Corporation are $150,000. Its total sales for the taxable year equal $2,500,000. The West Virginia payroll of General Con Corporation is $60,000, and its total annual payroll is $875,000. The proper apportionment factor for General Con Corporation is:

$$\frac{0}{10,000,000} + \frac{60,000}{875,000} + \frac{150,000}{2,500,000} + \frac{150,000}{2,500,000} =$$

$$\frac{0 + .0686 + .06 + .06}{4} = \frac{0.1886}{4} = .04715$$

7.11 **Property factor.**

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

7.11.1.1 The common law definition of real and personal property will be used, i.e., real property is land and all things firmly and permanently attached thereto, and personal property is all other property.

7.11.1.2 Only real and tangible personal property is counted in the property factor. The common law definition of tangible personal property is used. Examples of tangible personal property include, but are not limited to, books, equipment, supplies, inventories and virtually any other form of personalty that can be held or touched. Tangible personal property does not include money, chooses in action, or any other intangibles.

7.11.1.3 "Average" The average value of real and tangible personal property means the amount beginning and ending year balances of the relevant accounts reported on Schedule L of Federal Form 1120, or its successor. However, the Tax Commissioner may require use of a monthly average of such accounts or such other determination of the average value of such property as may be appropriate for an accurate determination of the factor.

7.11.2 **Value of property.**

7.11.2.1 Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and by partial or total disposition thereof by reason of sale, exchange, abandonment, loss or destruction or other alienation of, or loss of, the property. Where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at current market value. Property rented by the taxpayer from others shall be valued at eight times the net annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit in money or other consideration for the use of the property.

7.11.2.1.a Net annual rental rate includes any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

7.11.2.1.b Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services and the like are also included in the term "net annual rental rate." If a payment includes rent and other charges which are not separately set forth,

the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

7.11.2.1.c Real or personal property owned by one corporation which is used in this State by another corporation to which the property is rented is to be included in the property factor by both corporations unless the rental income is nonbusiness income to the receiving corporation.

7.11.2.1.c.1 **Example.** - X Corporation owns certain real property located in West Virginia, which is leased by Y Corporation for the entire taxable year of both corporations. Rental income received by X Corporation is allocated to the State of West Virginia and the value of the property is not included in the apportionment factor for X Corporation's apportionable income in either the numerator of the property factor (value of taxpayer's West Virginia real and tangible personal property) and in the denominator of the property factor (value of taxpayer's real and tangible personal property owned or rented by the taxpayer for the taxable year). Eight times the annual rental rate of the property will be included in both the numerator and the denominator of the property factor for Y Corporation.

7.11.3 **Movable property.**

7.11.3.1 The value of movable tangible personal property used both within and outside of this State shall be included in the numerator to the extent of its utilization in this State. The extent of utilization in this State is determined by multiplying the original cost of such property by a fraction, the numerator of which is the number of days of physical location of the property in this State during the taxable period, and the denominator of which is the number of days of physical location of the property everywhere during the taxable period. The number of days of physical location of the property may be determined on a statistical basis or by such other reasonable method acceptable to the Tax Commissioner.

7.11.4 **Leasehold improvements.**

7.11.4.1 For purposes of the property factor, leasehold improvements are treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or whether the improvements revert to the lessor upon expiration of the lease. Leasehold improvements are included in the property factor at their original cost.

7.11.4.1.a **Example.** - Alpha Corporation leases a building to Beta Corporation. The building is located in West Virginia. Beta Corporation makes certain leasehold improvements to the property totaling $100,000 some of which the lease permits Beta Corporation to remove. The entire value of the leasehold improvements is included in Beta Corporation's property factor. The value of the leasehold improvements is also included in Alpha Corporations property factor.

7.12 **Average value of property.**

7.12.1 The average value of property is determined by averaging the values of the property at the beginning and the ending of the taxable year.

7.12.1.1 If there are substantial fluctuations in the values of property during the taxable year, or where property is acquired or disposed of after the beginning of the taxable year, or where the rental or lease contract ceases before the end of a taxable year, the Tax Commissioner may require the averaging of monthly values of the property during the taxable year or the pertinent part thereof.

7.13 **Payroll factor.**

7.13.1 The payroll factor is a fraction, the numerator of which is the total compensation paid in this State during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

7.14 **Compensation.**

7.14.1 The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classified as an employee shall be excluded. Only those amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes. Compensation for each employee shall be the amount of wages and salary shown on the Federal Form W-2 for the employee, in accordance with federal income tax law.

7.15 **Employee.**

7.15.1 For purposes of determining the payroll factor, an employee is any officer of a corporation or any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

7.15.2 An employee is a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

7.16 **When compensation is paid in this State.**

7.16.1 Compensation is paid or accrued in this State if an employee's services are performed entirely within this State or if an employee's services are performed both within this State and outside of this State, but the

services performed outside of this State are incidental to that employee's services within this State. The converse is not true. In all circumstances, services performed in this State are to be included in the payroll factor as services performed in this State. "Incidental", as used herein, means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction. Compensation is also paid or accrued in this State if some of the employee's service is performed in this State and the employee's base of operation, or if there is no base of operation, the place from which the service is directed or controlled is in this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employees residence is within this State.

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

7.16.3 **Example.** - P Corporation has salesmen in several states. West Virginia customers are serviced by a salesman living in Ohio. The salesmen are directed from a regional office located in Pennsylvania. Compensation attributable to the time spent in West Virginia on employer business would be included in the taxpayer's West Virginia payroll factor.

7.17 **Sales factor.**

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

7.17.1.1 The only sales to be included in the sales factor are those which produce business income.

7.17.1.1.a "Business income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the

acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

7.17.2 **Rules for determining sales in certain circumstances.**

7.17.2.1 In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

7.17.2.2 In the case of cost fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

7.17.2.3 In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

7.17.2.4 In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing of the use of the property.

7.17.2.5 In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

7.17.3 In filing returns with this State, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose such information by attaching a statement, setting forth the nature and effect of the change, to the corporation net income tax return for the current year.

7.17.4 **Sales factor denominator.**

7.17.4.1 The denominator of the sales factor includes the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, unless otherwise excluded herein.

7.17.5 **Sales factor numerator.**

7.17.5.1 The numerator of the sales factor shall include gross receipts attributable to this State and derived by the taxpayer from

transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential changes incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

7.17.6 **Dock sales.**

7.17.6.1 Where tangible personal property is sold and the terms of the sale require the purchaser to pick up the property or otherwise receive the property in this State, the sale is to be treated as a sale taking place in this State for purposes of the sales factor.

7.17.6.2 In the case of sales requiring by their terms delivery of tangible personal property by common carrier, contract carrier or by other means of transportation excluding pickup by the customer in this State, whether directly or indirectly, the place at which the property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser.

7.17.6.3 Direct delivery in this State, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this State regardless of where title passes or other conditions of sale.

7.17.6.4 Direct delivery outside this State to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this State, regardless of where title passes or other conditions of sale.

7.17.6.5 **Examples.**

7.17.6.5.a Baubles, Inc. is located in Huntington, West Virginia, and makes sales of tangible personal property to an Ohio company. The terms of the sale require the Ohio company to ~~pickup~~ pick up the merchandise from the loading dock at Baubles. The sale is to be treated by Baubles as a sale taking place in this State.

7.17.6.5.b Alpha Corporation, which manufactures a highly sophisticated device used in mining, purchases certain tangible personal property from a company located in Virginia. Alpha Corporation, located in Bergoo, West Virginia is required by the terms of the sales contract to pick up the merchandise at the Virginia company's loading dock in Virginia. The sale is to be treated as not occurring in West Virginia by the Virginia company absent other nexus with West Virginia.

7.17.6.5.c RPS, Inc., is located in Morgantown, West Virginia and makes sales of tangible personal property. Some of the sales contracts require RPS to ship the goods to companies located outside of this State via common carrier. The sales of the tangible personal property shipped by the carrier are not included as West Virginia sales.

7.17.7 **Special rules.**

7.17.7.1 Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

7.17.7.2 Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this State. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, business automobiles, etc.

7.17.7.3 Where the income producing activity of a taxpayer other than a banking or financial institution in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in this State, the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property and income from the sale, licensing or other use of intangible personal property.

Where the business income from intangible property cannot readily be attributed to any particular income producing activity of a taxpayer other than a banking or financial institution, such income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

7.18 **Allocation of sales of tangible personal property.**

7.18.1 Sales of tangible personal property are in this State if the property is received in this State by the purchaser, other than the United States government, regardless of the f.o.b. point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser, regardless of where title passes or other conditions of sale. ~~and the~~ Direct delivery in this State, other than for purposes of transportation, to a person or firm designated by the purchaser, constitutes delivery to the purchaser in this State, and direct delivery outside this State to a person or firm designated by the purchaser does not constitute delivery to the purchaser in this State, regardless of where title passes or other conditions of sale. The sales of tangible personal property are also in this State if the property is shipped from an office, store, warehouse, factory

or other place of storage in this State and the purchaser is the United States government.

7.18.2 All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed are excluded from the denominator of the sales factor.

7.18.2.1 "Not taxed in another state" means in that state the taxpayer is not subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax or that a state has no jurisdiction to subject the taxpayer to a net income tax.

7.19 **Allocation of other sales.**

7.19.1 Sales, other than sales of tangible personal property are in this State if the income-producing activity is performed in this State or the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance, or the sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this State, and in either case the sale is a receipt described as attributable to this State in W. Va. Code § 11-24-7b.

7.20 **Financial organizations and other taxpayers with business activities partially within and partially without this State.** - Notwithstanding anything contained in this Section 7 of these regulations or the subsections thereof to the contrary, in the case of financial organizations and other taxpayers, not having their commercial domicile in this State, the rules of this section shall apply to the apportionment of income from their business activities except as expressly otherwise provided in W. Va. Code § 11-24-7b.

~~7.19.1.1~~ 7.21 The term "income-producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. Such activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. "Income-producing activity" includes, but is not limited to:

(1) ~~tendering~~ rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service; (2) the sale, rental, leasing, licensing or other use of real property; (3) the sale, rental, leasing, licensing or other use of tangible personal property; or (4) the sale, licensing or other use of intangible personal property. The mere holding of intangible property is not, in itself, an income-producing activity: **Provided**, That the conduct of the business of a financial organization shall constitute an income-producing activity.

~~7.19.1.2~~ 7.22 The term "cost of performance" means direct costs determined in a manner consistent with generally accepted accounting principles

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

~~7.19.1.3~~ 7.23 **Application and special rules.**

~~7.19.1.3.a~~ 7.23.1 Gross receipts from the sale, lease, rental or licensing of real property are located in this State if the real property is located in this State.

~~7.19.1.3.b~~ 7.23.2 Gross receipts from the sale, rental, lease, or licensing of tangible personal property are in this State if the property is located within this State. The rental, lease, licensing or other use of tangible personal property in this State is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this State during the rental, lease or licensing period, gross receipts attributable to this State shall be measured by the ratio which the days the property was physically present or was used in this State bears to the total days of the physical location or use of the property everywhere during such period.

~~7.19.1.3.c~~ 7.23.3 **Example.** - Taxpayer is the owner of ten railroad cars. During the current tax year, the total of the days each railroad car was present in this State was 60 days. The receipts attributable to the use of each of the railroad cars in this State are a separate item of income and shall be determined as follows:

$$\frac{\text{10 cars X 60 days each}}{\text{365 days in 1 year X 10 cars}} \times \text{Total receipts} =$$

Receipts attributable to this State.

~~7.19.1.3.d~~ 7.23.4 Gross receipts for the performance of personal services are attributable to this State to the extent such services are performed in this State. If services relating to a single item of income are performed partly within and partly outside of this State, the gross receipts for the performance of such services shall be attributable to this State only if a greater proportion of the services was performed in the state, based upon costs of performance. Usually, where services are performed partly within and partly outside of this State, the services performed in each state will constitute a separate income producing activity; in such case the gross receipts for the performance of services attributable to this State shall be measured by the ratio which the time spent in performing such services in this State bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example time spent in negotiating the contract, is excluded from the computations.

~~7.19.1.3.e~~ 7.23.5 **Example.** - Taxpayer, a road show, gave theatrical performances at various locations in State X and in this State during the tax period. All gross receipts from performances given in this State are attributable to this State as each performance is a separate income producing activity.

~~7.19.1.3.f~~ 7.23.6 **Example.** - Taxpayer, a public opinion survey corporation, conducted a poll by its employees in State F and in this State for the sum of $10,000. The project required 800 man hours to obtain the basic data and to prepare the survey report. Three hundred of the 800 man hours were expended in this State. The receipts attributable to this State are: 300/800 X $10,000 = $3,750.

~~7.19.1.3.g~~ 7.23.7 **Example.** - Boil Laboratories, Inc. performs certain medical tests. Boil Laboratories is located in Virginia, where all analysis is performed. Boil Labs also has a location in this State where tissue specimen are collected, as well as a truck and routeman in this State who collects samples from various doctor's offices and hospitals. Boil Labs has a similar set-up in Virginia. It costs Boil Labs $18 to analyze each specimen. All but $5 of the $18 of these costs are incurred in the State of Virginia. Each sample or specimen is a separate income-producing activity and is not the sale of tangible personal property. Since the income-producing activity is performed both in and outside of this State, and a greater proportion of the income producing activity is not performed in this State, then none of the charges for the analysis of samples or specimens drawn in this State will be included as sales in this State for purposes of the sales factor.

~~7.20~~ 7.24 **Other methods of allocation and apportionment.**

~~7.20.1~~ 7.24.1 If the allocation and apportionment provisions of W. Va. Code § 11-24-7(d) and (e) do not fairly represent the extent of the taxpayer's business activities in this State, the taxpayer may petition for, or the Tax Commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable: (1) separate accounting; (2) exclusion of one or more of the factors; (3) inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or (4) the employment of any other method, including a unitary basis, to effectuate an equitable allocation or apportionment of the taxpayer's income.

~~7.20.2~~ 7.24.2 In order for a taxpayer to request an alternative method of allocation and apportionment, or of allocation or apportionment, a taxpayer shall do so by filing a petition. This petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing such return, and the petition shall include a statement of the petitioner's objections to the statutory method of allocation and apportionment or of allocation or apportionment and a statement of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof as the Tax Commissioner may require.

~~7.20.3~~ 7.24.3 **Alternative method for public utilities.**

~~7.28.3.1~~ 7.24.3.1 If the taxpayer is a public utility and if the allocation and apportionment provisions of Subsections (d) and (e) of West Virginia Code § 11-24-7, do not fairly represent the taxpayer's business activities in this State, the taxpayer may petition for, or the Tax Commissioner may require, as an alternative to the other methods provided for in paragraph (1), Subsection (h) of W. Va. Code § 11-24-7, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the West Virginia Public Service Commission pursuant to the provisions of West Virginia Code § 11-24-8, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this State for the purposes of the tax imposed by W. Va. Code § 11-24-1 **et seq.**

~~7.28.4~~ 7.24.4 Unitary methods.

~~7.28.4.1~~ 7.24.4.1 A taxpayer may request to file on a unitary basis in accordance with the rules set forth herein.

~~7.28.4.2~~ 7.24.4.2 Determination of a Unitary or Separate Business.

~~7.28.4.2.a~~ 7.24.4.2.a A corporation subject to taxation may be engaged in more than one "trade or business." In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by a formula which takes into consideration the instate and out-of-state factors which relate to the respective trade or business subject to apportionment.

~~7.28.4.2.b~~ 7.24.4.2.b In addition, a corporation may be engaged in a single trade or business in combination with another commonly owned and controlled corporation or corporations. In such cases, it is necessary to determine the total business income of all such corporations attributable to the single trade or business. The combined income of the single trade or business is then apportioned by formula which takes into consideration the in-state and out-of-state factors of each corporation which relate to that single trade or business.

~~7.28.4.2.c~~ 7.24.4.2.c When business segments of a single corporation or the business activities of more than one corporation constitute a single trade or business, such single trade or business is said to constitute a "unitary business."

~~7.28.4.2.d~~ 7.24.4.2.d A unitary business exists when the operations of the business segments of a corporation or group of commonly owned and controlled corporations contribute to or depend on each other in such a way as to result in functional integration between such segments. Functional integration refers to transfers between or pooling among business segments of such items as products or services, technical information, marketing information, distribution systems, purchasing and intangibles (such as patents, copyrights, formulas, processes, trade secrets, and the like) in a manner which substantially affects the segments' business operations related to such

activities as development, manufacture, production, extraction, distribution or sale of its products or services.

~~7.20.4.2.e~~ 7.24.4.2.e **Evidence of functionally integrating factors.** - The determination of whether or not the operations of business segments are functionally integrated will turn on the facts and circumstances of the case. Several factors may evidence that the operations of business segments are functionally integrated. A non-exclusive list of such factors is found below in paragraph ~~7.20.4.2.f~~ 7.24.4.2.f of this Subsection. Generally, several functionally integrating factors will exist in a unitary business, although a unitary business may exist as a result of few factors or even one factor, if the factor or factors involved are particularly significant. In determining whether a unitary business exists factors should not be examined in isolation. Instead, it should be determined whether the factors which are present, in combination, result in a functionally integrated business. In addition, the presence or absence of any one factor or any particular factors is not necessarily determinative as to whether a unitary business exists, although absence of all of the factors described by subparagraphs ~~7.20.4.2.f.1~~ 7.24.4.2.f.1 through ~~7.20.4.2.f.5~~ 7.24.4.2.f.5 of paragraph ~~7.20.4.2.f~~ 7.24.4.2.f of this Subsection will generally result in a finding that a unitary business does not exist.

~~7.20.4.2.f~~ 7.24.4.2.f **Functionally integrating factors.** - A non-exclusive listing of factors to be considered in determining whether business segments are functionally integrated appears below.

~~7.20.4.2.f.1~~ 7.24.4.2.f.1 **Intercompany sales, exchanges, or transfers.**

~~7.20.4.2.f.1.a~~ 7.24.4.2.f.1.a Sales, exchanges, or transfers (hereinafter "sales") of products, services, intangibles or the like between business segments are important indicia of functional integration. The significance of intercompany sales will be a function of both the character of the items sold and percentage of total sales or purchases represented by the intercompany sales. Intercompany sales at a given level take on greater significance if there is a limited sales or purchasing market for such items or if valuable trade name or other intangibles are associated with such sales, or both.

~~7.20.4.2.f.1.b~~ 7.24.4.2.f.1.b The fact that intercompany sales are at a readily determinable market price does not negate the importance of such sales as a functionally integrating factor, because such sales generally represent an assured market for the seller and a guaranteed source of supply for the purchaser.

~~7.20.4.2.f.1.c~~ 7.24.4.2.f.1.c As the percentage of intercompany sales to the total sales of the selling segment increases or as the percentage of intercompany purchases of the purchasing segment's total purchases increases, the more important such purchases and sales become as a unitary factor.

For purposes of this subparagraph, where goods, services, or intangibles are transferred without charge, percentages of cost (or cost of goods sold) may be used in lieu of percentage of sales or purchases. For purposes of this subparagraph, management stewardship activities are not considered an intercompany sale or transfer of services. Generally, intercompany sales or purchases in excess of 10% will be considered a significant, although not necessarily determinative, unitary factor. Sales of less than 10% become relatively less significant as the percentage of sales declines, but a small percentage of sales may nevertheless be considered significant if the sales represent goods or services which are particularly important to the purchaser's operations.

~~7.28.4.2.f.1.c.1~~ 7.24.4.2.f.1.c.1 **Example.** - Business segments A and B are commonly owned and controlled. Segment A grows citrus and other fruit. Segment B manufactures soft drinks. A sells to B oils extracted from the skin of a special variety of fruit for use in B's soft drinks. This oil is not significantly available from other sources. The sales represent only a small portion of A's total sales and B's total purchases. The unusual flavor produced by the oil is a major factor in the character of the soft drink. Consumer taste tests demonstrate a strong preference for the soft drink with this oil as an ingredient. The intercompany sales between A and B would be considered a significant unitary factor.

~~7.28.4.2.f.1.d~~ 7.24.4.2.f.1.d Sales, exchanges or transfers between business segments may be disregarded where intercompany sales are used as a device to assert unitary combination for tax avoidance purposes.

~~7.28.4.2.f.2~~ 7.24.4.2.f.2 **Common marketing.**

~~7.28.4.2.f.2.a~~ 7.24.4.2.f.2.a When business segments share substantial common marketing features, such features can be an important characteristic of functional integration when such marketing results in significant mutual advantage. For this purpose, common marketing exists when a substantial portion of the business segments' products, services, intangibles, or the like are distributed or sold to a common customer, or the business segments use a common trade name or other common identification and such common identification is a significant factor in purchasers' decisions to purchase the respective products or services.

~~7.28.4.2.f.2.a.1~~ 7.24.4.2.f.2.a.1 **Example.** - Business segments A and B are commonly owned and controlled. A manufactures small tools and garden implements. B manufactures auto replacement parts and accessories. Both A and B jointly sell a substantial portion of both segment's total production to various hardware store chains, which then sell both product lines to the public. As a result of such common sales, both segments are able to obtain preference on shelf space and greater merchant participation in product promotion of each segment. Such common sales would be considered a functionally integrating factor.

~~7.28.4.2.f.2.a.2~~ 7.24.4.2.f.2.a.2 **Example.** - Commonly owned and controlled segments A, B, and C manufacture furniture,

carpeting, and household appliances, respectively. All three product lines are sold under the name "Alpha" which is a nationally recognized trade name. A, B and C jointly participate in advertising to portray the "Alpha" name as a symbol of quality and value. Based on consumer studies, the "Alpha" name is a significant factor in the consumer's decision to purchase the respective products. The common use of the trade name "Alpha" would be considered a functionally integrating factor.

~~7-20-4-2-f-2-b~~ 7.24.4.2.f.2.b Common use of an advertising agency does not constitute common marketing, absent circumstances described above. In addition, shared use of a commonly owned and controlled business segment which provides advertising services is not common marketing described by this subparagraph, absent circumstances described above. (See subparagraph ~~7-20-4-2-f-7~~ 7.24.4.2.f.7 of this paragraph).

~~7-20-4-2-f-3~~ 7.24.4.2.f.3 **Transfer or pooling of technical information.** - Evidence of functional integration may be indicated by transfers or pooling of technical information, know-how, or research and development, if such transfer or pooling represents a significant economy of scale or the information shared is particularly important to the segments' operations.

~~7-20-4-2-f-4~~ 7.24.4.2.f.4 **Common distribution system.** - Business segments may demonstrate evidence of functional integration by use of a common distribution system, under which inventory control and accounting, storage, trafficking and transportation are controlled through a common network.

~~7-20-4-2-f-5~~ 7.24.4.2.f.5 **Common purchasing.** - Evidence of functional integration may be indicated by common purchasing of substantial quantities of products, services intangibles, or the like from the same source, where such purchasing results in a significant economy of scale, or where such products, services, intangibles, or the like are not readily available from other sources and are particularly important to each segment's operations or sales.

~~7-20-4-2-f-6~~ 7.24.4.2.f.6 **Centralized management.**

~~7-20-4-2-f-6-a~~ 7.24.4.2.f.6.a Centralization of management exists when directors, officers and/or management employees jointly participate in management decisions which significantly affect the respective business segments. Transfer of officers or management employees between business segments may also provide evidence of centralization of management.

~~7-20-4-2-f-6-b~~ 7.24.4.2.f.6.b The mere presence of centralized management is not sufficient to support a finding that the operations of commonly owned and controlled business segments are functionally integrated. Only those centralized management activities which contribute to the integration of the operations under consideration constitute a functionally integrating factor. Centralized efforts to fulfill investment stewardship responsibilities, such as the implementation of a uniform system of internal

controls, or regulatory reporting requirements, such as the establishment of centralized information processing, will not be determinative for this purpose.

~~7-28-4-2-f-6-b-1~~ 7.24.4.2.f.6.b.1 **Example.** - Business segments A, B, C, D, and E are commonly owned and parts of a large nationwide conglomerate. Segments A, B, C, and D manufacture clothing, furniture, musical instruments, and bakery products, respectively. Segment E is a book publisher. The managers of E receive monthly financial reports from each of the segments, review and approve budgets of each segment, review and approve major acquisitions and new product lines of each segment, review and approve hiring and firing of managers of each segment, and provide for intercompany financing. None of the respective segments has intercompany sales, common marketing, pooling of technical knowledge, a common distribution system, or common purchases with any other segment. Due to the absence of significant functional integration among each of the respective segments, each business segment constitutes a separate trade or business.

~~7-28-4-2-f-6-c~~ 7.24.4.2.f.6.c Centralization of management is more significant as a unitary factor when business segments are engaged in the same general line of business or constitute steps in a vertically integrated enterprise than in other business contexts, because of the opportunity the respective segments have in making use through such central management of readily transferable knowledge and expertise of the operations of the other segment, and developing coordination between the business segments.

~~7-28-4-2-f-7~~ 7.24.4.2.f.7 **Other factors.** - Functional integration of business segments will generally not be evidenced by such factors (alone or in combination with other factors described by this subparagraph) as common or intercompany financing (other than between financial institutions), advertising (in the absence of common marketing described by subparagraph ~~7-28-4-2-f-2~~ 7.24.4.2.f.2 of this paragraph), labor relations, warehousing (in the absence of a central distribution system described by subparagraph ~~7-28-4-2-f-4~~ 7.24.4.2.f.4 of this paragraph), pension plans, insurance, and personnel recruitment.

However, where a factor or factors described by subparagraphs ~~7-28-4-2-f-1~~ 7.24.4.2.f.1 through ~~7-28-4-2-f-5~~ 7.24.4.2.f.5 of this paragraph do not clearly demonstrate that functional integration exists, the factor or factors described in this subparagraph may, in combination with the factors described in subparagraphs ~~7-28-4-2-f-1~~ 7.24.4.2.f.1 through ~~7-28-4-2-f-5~~ 7.24.4.2.f.5 of this paragraph, demonstrate sufficient additional evidence of functional integration to warrant a finding that a unitary business exists.

~~7-28-4-2-f-8~~ 7.24.4.2.f.8 **Factors accorded little weight.** - Factors such as common legal services, accounting, tax administration, and financial reporting will generally be accorded little weight in the determination of whether business segments are functionally integrated.

~~7-28-4-2-g~~ 7.24.4.2.g The presence of a unitary business will be presumptively shown by the presence of the following:

~~7.20.4.2.g.1~~ 7.24.4.2.g.1 Same general line of business: There is a strong presumption that a corporation or a commonly owned and controlled group of corporations is engaged in a unitary business when its activities are in the same general line. For example, a corporation which operates a chain of retail grocery stores will almost always be engaged in a unitary business.

~~7.20.4.2.g.2~~ 7.24.4.2.g.2 Steps in a vertical process: A corporation or a commonly owned or controlled group of corporations is almost always engaged in a unitary business when its various divisions or segments are engaged in different steps in a vertically structured enterprise. For example, a corporation which explores for and mines copper ores; concentrates, smelts and refines the copper ores; fabricates the refined copper into consumer products and distributes such products (whether by intercompany fee or purchase, or without charge) is engaged in a unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the corporation's executive offices.

~~7.20.4.2.h~~ 7.24.4.2.h Business segments which are neither in the same general line nor steps in a vertical process are presumptively engaged in separate businesses, absent a determination that the respective segments are functionally integrated.

~~7.20.4.2.i~~ 7.24.4.2.i In the event that a business segment is functionally integrated with a second business segment and the second business segment is functionally integrated with a third business segment, the first, second and third business segments constitute a unitary business notwithstanding the fact that the first and third business segments are not functionally integrated with each other. The preceding sentence shall not apply where the second business segment's functional integration is not substantial viewed from the perspective of either the first or third business segment.

~~7.20.4.2.i.1~~ 7.24.4.2.i.1 **Example.** - Business segments A, B, and C are commonly owned and controlled. A is an architectural firm. B is a construction company which builds office and apartment buildings. C is a manufacturer of finished steel. A provides architectural services to B, representing half of the total architectural services it provides. C designs, fabricates, and sells the superstructures used in the construction of B's office and apartment buildings. The steel superstructures constitute 20% of B's construction purchases. A and C have no intercompany sales, common marketing, pooling of technical knowledge, common distribution system or common purchases. Nevertheless, A, B, and C constitute a unitary business because B is functionally integrated with both A and C.

~~7.20.4.2.i.2~~ 7.24.4.2.i.2 **Example.** - Business segments A, B, and C are commonly owned and controlled. A is in the business of oil exploration, extraction and refining. B is a charter air transportation company. C produces motion pictures. A and C have no intercompany sales, common marketing, pooling of technical knowledge, or common distribution system. A uses B's service for transporting oil executives, engineers and geologists to

remote oil exploration and drilling sites. C uses B's services for flying movie executives and actors to movie locations and business meetings. A and C's common purchases are limited to the transportation services provided by B. A's use of B's service constitute 20% of B's total charter sales. C's use of B's service constitutes 40% of B's total charter sales. However, B's service represents less than a hundredth of a percent of A's total purchases and only two tenths of a percent of C's total purchases. Despite the fact that B is functionally integrated with both A and C, A, B, and C do not constitute a unitary business.

~~7.28.4.2.j~~ 7.24.4.2.j Where the taxpayer asserts that business segments are unitary, the taxpayer shall have the burden of proof. Failure by the taxpayer to produce requested evidence which lies within the control of the taxpayer gives rise to a presumption that the evidence would be unfavorable if provided.

~~7.28.5~~ 7.24.5 **Burden of proof.**

~~7.28.5.1~~ 7.24.5.1 In any proceeding before the Tax Commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in paragraph (1) or (2), Subsection (h), of W. Va. Code § 11-24-7 is sought, on the ground that the allocation and apportionment provisions of Subsections (d) and (e) of W. Va. Code § 11-24-7 do not fairly represent the extent of the taxpayer's business activities in this State, the burden of proof shall: (1) If the Tax Commissioner seeks employment of one of such methods, be on the Tax Commissioner, or (2) if the taxpayer seeks employment of one of such other methods, be on the taxpayer.

§ 110-24-7a. Special Apportionment Rules For Motor Carriers.

7a.1 Motor carriers of property or passengers shall apportion the business income component and the nonbusiness income component which is not allocated pursuant to W. Va. Code § 11-24-7 of their adjusted federal taxable income of this State by the use of the ratio which their total vehicle miles in this State during the taxable year bears to total vehicle miles of the corporation everywhere during the taxable year, except as otherwise provided.

7a.2 Definitions for purposes of this Section.

7a.2.1 "Motor carrier" means any corporation engaging in the transportation of passengers or property or both, for compensation by motor propelled vehicle over roads in this State, whether traveling on a scheduled route or otherwise.

7a.2.2 "Vehicle mile" means the operation of a motor carrier over a distance of one mile, whether owned or operated by a corporation.

7a.3 When special apportionment rules for motor carriers inapplicable.

7a.3.1 If a motor carrier neither owns nor rents real or tangible personal property located in this State, has made no pick-ups or deliveries in

this State, and has traveled less than fifty thousand vehicle miles in this State during the taxable year, then the special apportionment rules in W. Va. Code § 11-24-7a shall not apply.

7a.3.2 If a motor carrier neither owns nor rents any real or tangible personal property located in this State, except vehicles, and makes no more than twelve trips into or through this State during a taxable year the special apportionment rules shall not apply.

7a.3.3 Mileage traveled under fifty thousand miles or mileage traveled in this State during the twelve trips into or through this State may not represent more than five percent of the total motor vehicle miles traveled in all states during the taxable year.

§ 110-24-7b. Special Apportionment Rules - Financial Organizations.

7b.1 **General.** - The Legislature has found that the general formula set forth in W. Va. Code § 11-24-7 for apportioning the business income of corporations taxable in this State as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in W. Va. Code § 11-24-7 may not be used to apportion the business income of such financial organizations, which shall use only the apportionment formula and methods set forth in W. Va. Code § 11-24-7b for taxable years beginning after December 31, 1990.

7b.2 **Financial organizations with business activities partially within and partially without this State.** - A financial organization not having its commercial domicile in this State shall apportion the business income component of its federal taxable income (as adjusted by W. Va. Code § 11-24-6) to this State as provided in this Section 7b and the subsections thereof if it regularly engages in business in this State.

7b.2.1 **Nexus presumptions and exclusions.** - A financial organization is presumed to be regularly engaging in business in this State if during any year it obtains or solicits business with twenty or more persons within this State, or if the sum of the value of its gross receipts attributable to sources in this State equals or exceeds one hundred thousand dollars. However, gross receipts from the following types of property (as well as those contacts with this State reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property) shall not be a factor in determining whether the owner is engaging in business in this State:

7b.2.1.1 An interest in a real estate mortgage investment conduit, a real estate investment trust or a regulated investment company;

7b.2.1.2 An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of

interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificate;

7b.2.1.3 An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan, and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

7b.2.1.4 An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph, and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; and

7b.2.1.5 Any amounts held in an escrow or trust account with respect to property described above.

7b.2.2 **Definitions.** - For purposes of this subsection:

7b.2.2.1 "Deposit" means:

7b.2.2.1.a The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable: **Provided**, That without limiting the generality of the term "money or its equivalent," any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable or for a charge against a deposit account or in settlement of checks, drafts or other instruments forwarded to such bank for collection;

7b.2.2.1.b Trust funds received or held by such financial organization, whether held in the trust department or held or deposited in any other department of such financial organization;

7b.2.2.1.c Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other (including funds held as dealers reserves) or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for

distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: **Provided**, That there shall not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness;

7b.2.2.1.d Outstanding drafts (including advice or authorization to charge a financial organization's balance in another such organization), cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

7b.2.2.1.e Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if such entity is engaged in soliciting and holding such balances in the regular course of its business.

7b.2.2.2 "Sales" means:

For purposes of apportionment, the "sales" of a financial organization shall mean the gross receipts described in the gross receipts factor in this subsection, regardless of their source.

7b.2.3 **Commercial domicile - apportionment or credit.** - Financial organizations which do not have their commercial domicile in West Virginia shall use the apportionment rules set forth in this section. Financial organizations with their commercial domicile in West Virginia may not apportion their business income, but shall report all net income to West Virginia without apportionment: **Provided**, That any financial organizations with their commercial domicile in West Virginia shall be allowed the credit against their corporation net income tax liability as described in Section 24 of this article.

7b.2.4 **Apportionment rules.** -

7b.2.4.1 **General method.** -

If a financial organization not having its commercial domicile in this State is engaging in business both within and without this State, the portion of its net income arising from such business, which is derived from sources within this State, shall be determined by apportionment in accordance with this subsection. The apportioned net income shall be determined by multiplying net income by the special gross receipts factor as defined in this subsection. Neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in W. Va. Code §§ 11-24-6(f)(1)(A), (B), (C) and (D).

7b.2.4.2 **Special gross receipts factor.** - The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this State during the taxable year and the

denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year.

Numerator. - The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under W. Va. Code § 11-24-7, the following:

7b.2.4.2.a Receipts from the lease or rental of real or tangible personal property (whether as the economic equivalent of an extension of credit or otherwise) if the property is located in this State;

7b.2.4.2.b Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if such security property is located in the State. In the event that such security property is also located in one or more other states, such receipts shall be presumed to be from sources within this State, subject to rebuttal based upon factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this State;

7b.2.4.2.c Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this State, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

7b.2.4.2.d Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this State: **Provided**, That such receipts are presumed to be from sources in this State and such presumption may be overcome by reference to factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this State;

7b.2.4.2.e Interest income and other receipts from a financial organization's syndication and participation in loans, under the rules set forth in Sections 7b.2.4.2.a through 7b.2.4.2.d above;

7b.2.4.2.f Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this State or if the billings for any such receipts are regularly sent to an address in this State;

7b.2.4.2.g Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this State. In the case of merchants located within and without this State, only receipts from merchant discounts attributable to sales made from locations within this State shall be attributed to this State. It shall be presumed,

subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

7b.2.4.2.h Receipts from the performance of services which are attributed to this State if:

7b.2.4.2.h.1 The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this State, except that, at the taxpayer's election, receipts from loan-related fees which are either: (1) "Pooled" or aggregated for collective financial accounting treatment; or (b) manually written as non-recurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

7b.2.4.2.h.2 The service receipts are deposit-related fees and the depositor resides in this State, except that, at the taxpayer's election, receipts from deposit related fees which are either: (a) "Pooled" or aggregated for collective financial accounting treatment; or (b) manually written as non-recurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

7b.2.4.2.h.3 The service receipt is a brokerage fee and the account holder is a resident of this State;

7b.2.4.2.h.4 The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this State immediately before death, or the grantor who either funded or established the trust is a resident of this State; or

7b.2.4.2.h.5 The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this State and the economic benefit of such service is received in this State;

7b.2.4.2.i Gross receipts from the issuance of travelers checks and money orders if such checks and money orders are purchased in this State; and

7b.2.4.2.j All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

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

7b.3 **Method of filing.** - Financial organizations subject to apportionment under W. Va. Code § 11-24-7b(b) and Section 7b.2 and the subsections thereof of these regulations shall file only separate tax returns, and may not file on a consolidated or any other basis: **Provided**, That financial organization which are members of an affiliated group may file on a consolidated basis if all members of the affiliated group have their commercial domicile in this State.

§ 110-24-8. Accounting Periods And Methods Of Accounting.

8.1 **Period of computation of West Virginia taxable income.**

8.1.1 For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

8.2 **Change of taxable year.**

8.2.1 If a taxpayer's year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed.

8.3 **Methods of accounting.**

8.3.1 **Same as federal.**

8.3.1.1 A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, West Virginia taxable income for purposes of this article shall be computed under such method that in the opinion of the tax commissioner clearly reflects such income.

8.3.2 **Change of accounting methods.**

8.3.2.1 If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be changed so that it conforms to the method used for federal income tax purposes.

8.4 **Adjustments.**

8.4.1 In computing a taxpayer's West Virginia taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's West Virginia taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

8.5 **Limitation on additional tax.**

8.5.1 **Change other than to installment method.**

8.5.1.1 If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

8.5.1.2 Procedure for determining tax liability under the provisions of West Virginia Code § 11-24-8(e).

8.5.1.2.a Compute the tax for the current year using the regular method, including determination of effective tax rate.

8.5.1.2.b Multiply the dollar amount of the income adjustment included in the West Virginia taxable income by the current year effective tax rate.

8.5.1.2.c Pro-rate the adjustments over the current tax year and over no more than two of the preceding tax years.

8.5.1.2.d Multiply the dollar amount of the adjustments allocated to each of the years, to the extent the adjustments were included in West Virginia taxable income, by the effective tax rate applicable to each of the years.

8.5.1.2.d.1 **Example.** - Corporation K reported income adjustments on Federal Form 1120 of $100,000. The effective tax rate for the year is 9.675%. The income tax on the adjustments is $9,675 ($100,000 x .09675). The pro-ration over three years is:

Year	1/3 of Adjustment Amount		Applicable Tax Rate		Proration - Tax Tax Reduction Amount
19X3	$33,333.33	x	.09675	=	$3,225
19X2	33,333.33	x	.0825	=	2,750
19X1	33,333.33	x	.0675	=	2,250
					$8,225

The tax liability reduction for the current year is $9,675 - $8,225 = $1,450.

8.6 **Change from accrual to installment method.**

8.6.1 If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipts of installment payments properly accrued in a prior year shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments.

8.7 **Application of federal accounting adjustments.**

8.7.1 Notwithstanding any of the other provisions of this Section, any accounting adjustments made for federal income tax purposes for any taxable year shall be applied in computing the taxpayer's taxable income for such taxable year.

8.8 **Taxpayer currently on the installment method of accounting.**

8.8.1 If a taxpayer is using the installment method of accounting on or before July 1, 1967, any tax for the year of the enactment of W. Va. Code § 11-24-1 **et seq.** and for any subsequent year which is attributable to the receipts of installment payments properly accrued in a period prior to the enactment of this article and which were subject to the privilege tax as imposed by ~~article-thirteen-of-chapter-eleven-of-this-Code~~ W. Va. Code § 11-13-1 et seq. shall, be reduced by the portion of such privilege tax previously paid on such receipts.

§ 110-24-9. Reserved For Future Use.

§ 110-24-9a. Severance Tax Credit Against Corporation Net Income Tax.

9a.1 A credit is allowed against the primary corporation net income tax equal to the amount of the taxpayer's liability for a taxable year for the severance tax imposed in W. Va. Code § 11-13A-1 **et seq.** for taxable years beginning before October 1, 1990. This credit shall not be available for tax years beginning after September 30, 1990.

9a.2 **Limitations.**

9a.2.1 The severance tax credit is limited to the smallest of the following:

9a.2.1.1 The amount of the severance tax imposed.

9a.2.1.2 Fifty percent of the amount of the Corporation Net Income Tax before credits.

9a.2.1.3 Fifty percent of the Corporation Net Income Tax liability imposed upon net income derived from activity or activities subject to the severance tax.

9a.3 If a taxpayer elects to take the severance tax credit, it shall make an adjustment pursuant to W. Va. Code § 11-24-6 increasing its federal taxable income in the amount of the severance tax liability taken as a deduction for federal income tax purposes for the taxable year.

9a.4 For purposes of the severance tax credit against the corporation net income tax, the severance tax liability of a taxpayer is the severance tax liability computed without reduction for the tax credit for coal loading

facilities, the tax credit for industrial expansion or the revitalization credit allowed for such year.

9a.5 **Election.**

9a.5.1 Instead of taking a severance tax credit a taxpayer may, at its option, retain the deduction for severance tax liability taken for federal income tax purposes on its return for the taxable year.

9a.6 **Example.** - Company A is engaged in coal mining and glass manufacture in West Virginia. Company A has a federal taxable income of $1,675,000, and a West Virginia net income of $1,500,000 after making the adjustments prescribed in W. Va. Code § 11-24-6. After allocation and apportionment, the company has a West Virginia taxable income of $750,000, of which $250,000 was derived from coal mining in this State subject to the severance tax. Its severance tax liability for the tax year is $36,000. After taking the coal loading facilities credit, the industrial expansion credit and the revitalization credit against its severance tax liability, the company actually paid $4,500 in severance tax liability. The company may elect to forego the severance tax credit and retain the $4,500 deduction taken for federal income tax purposes. If the company elects to take the severance tax credit, it must add back as an adjustment under W. Va. Code § 11-24-6 the $4,500 taken as a deduction for severance taxes on its federal return for the taxable year. Next, the company must calculate the pertinent limitation. In this example, the corporation net income taxes on the net income giving rise to the severance tax credit is $23,625 ($250,000 net income from coal mining multiplied by the applicable corporation net income tax rate of 9.45% percent). Fifty percent of this is $11,813. Thus, if Company A elects to take the severance tax credit, the credit will be limited to a maximum of $11,813. Note that for purposes of the severance tax credit, the entire severance tax liability without reduction for credits is used. The credit is limited to the lesser of: (1) the severance tax liability ($36,000.00); (2) fifty percent of the overall corporation net income tax liability ($750,000.00 X tax rate(s) - 2); or (3) fifty percent of corporate net income tax liability attributable to the net income giving rise to the severance tax credit ($250,000.00 X tax rate(s) - 2).

§ 110-24-9b. Reserved For Future Use.

§ 110-24-9c. Research And Development Credit.

9c.1 **Credit allowed.**

9c.1.1 There is allowed a research and development credit against the corporation net income tax.

9c.2 **Amount of credit and limitations.**

9c.2.1 For property and services purchased for an eligible research and development project the amount of allowable credit shall be equal to ten percent of the eligible investment made for an eligible research and development project.

9c.2.2 The allowable credit shall be applied over a ten-year period of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or used in this State, or is expensed for federal income tax purposes.

9c.2.3 No carryover to a subsequent tax year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

9c.2.4 The amount of the credit may not reduce by more than fifty percent the amount of the net tax liability of the taxpayer for the taxable year.

9c.2.5 No credit is allowed for any property purchased prior to July 1, 1989.

9c.2.6 No credit is allowed for any property purchased for an eligible research and development project when such property is used to determine the eligible investment for purposes of the industrial expansion or revitalization credit against any tax or taxes, or for purposes of the business investment and jobs expansion credit against any tax or taxes.

9c.2.7 If a taxpayer elects the research and development credit, one-tenth of the entire amount of the eligible investment upon which the credit is predicated and which was taken as a deduction in determining its taxable income for the taxable year shall be an increasing adjustment to federal taxable income under W. Va. Code § 11-24-6.

9c.3 Eligible investment.

9c.3.1 General.

9c.3.1.1 The eligible or qualified investment in a research and development project shall be the sum of the applicable percentage of the cost of land and depreciable property purchased for the conduct of an eligible research and development project, which is placed in service or use in this State during the taxable year, plus the amount of qualified research expenses deducted by the eligible taxpayer for federal income tax purposes. For purposes of the research and development credit against the corporation net income tax, depreciable property includes property for which an election was made to expense such property under Section 179 of the Internal Revenue Code of 1986.

9c.3.2 Applicable percentage of property.

9c.3.2.1 For purposes of the research and development credit, the applicable percentage for land and depreciable property is:

Useful Life:	Applicable Percentage:
Less than 6 years	33 1/3
6 years to less than 8 years	66 2/3

8 years or more 100

9c.3.2.2 The useful life of any property is determined as of the date such property is first placed in service or use within this State by the taxpayer, determined in accordance with federal income tax law.

9c.3.2.3 Company X, Inc. purchased research and development equipment in 1985. At that time, the equipment had a ten year useful life for federal income tax purposes. Company X paid $50,000 for the property in 1985, and expensed $5,000 of the property in 1985, pursuant to Section 179 of the Internal Revenue Code. Company X moves its research center to Charleston, West Virginia in 1990. For purposes of the research and development credit, Company X will use 33 1/3 as the applicable percentage, since the property had a useful life of less than six years when the property was first placed into service in West Virginia. The entire $50,000 would count as depreciable property even though the taxpayer expensed $5,000 pursuant to IRC § 179.

9c.3.3 **Cost of property.**

9c.3.3.1 The cost of each property purchased for the conduct of an eligible research and development project shall be determined in accordance with the following rules:

9c.3.3.1.a **Trade-ins.** - Cost shall not include the value of property given in trade or exchange for the property purchased for conduct of the research and development project.

9c.3.3.1.b **Damaged, destroyed or stolen property.** - If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

9c.3.3.1.c **Rental property.** - The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

9c.3.3.1.d **Property purchased for multiple use.** - The cost of property purchased for multiple business use including direct use in the conduct of an eligible research and development project, together with some other business or activity not eligible under this Section, shall be apportioned between such activities. The amount apportioned to the conduct of the eligible research and development project shall be considered to be eligible investment subject to the conditions and limitations of this Section.

9c.3.3.1.e **Self-constructed property.** - In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

9c.3.3.2 **Qualified research expenses.** - For purposes of this Section:

9c.3.3.2.a "Qualified research expenses" means the sum of in-house and contract research expenses for qualified research, allocated to this State, which are paid or incurred by the eligible taxpayer during the taxable year in carrying on any trade or business taxable under W. Va. Code § 11-24-1 **et seq.** In no event may "qualified research expenses" include any expense that must be capitalized and depreciated for federal income tax purposes, or any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent or quality of any deposit of coal, limestone or other natural resource, including oil and natural gas.

9c.3.3.3 "In-house research expenses" means:

9c.3.3.3.a Wages paid or incurred to an employee for qualified services performed in this State by such employee;

9c.3.3.3.b Amounts paid or incurred for supplies used in the conduct of qualified research in this State; and

9c.3.3.3.c Amounts paid or incurred to another person for the right to use personal property in the conduct of qualified research in this State.

9c.3.3.4 "Qualified services" means services consisting of:

9c.3.3.4.a Engaging in qualified research in this State; or

9c.3.3.4.b Engaging in the direct supervision or direct support of research activities in this State, which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consist of services meeting the requirements of subparagraph 9c.3.3.4.a or 9c.3.3.4.b, the term "qualified services" means all services performed by such individual for the taxable year.

9c.3.3.5 "Supplies" means any tangible property other than:

9c.3.3.5.a Land or improvements to land; and

9c.3.3.5.b Property of a character subject to depreciation for federal income tax purposes.

9c.3.3.6 "Wages" has the meaning given to such term by Section 3401(a) of the Internal Revenue Code of 1986, as amended and as shown for each employee on Federal Form W-2. In the case of self-employed individuals and owner-employees (within the meaning of Section 401(c)(1) of said Internal Revenue Code), the term "wages" includes the earned income (as defined in

Section 401(c)(2) of said Internal Revenue Code of such employee. The term "wages" shall not include any amount taken into account in determining the federal targeted jobs credit under Section 51(a) of said Internal Revenue Code.

9c.3.3.7 "Contract research expenses" means:

9c.3.3.7.a In general, sixty-five percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

9c.3.3.7.b If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of the taxable year, such amount shall be treated as paid or incurred during the taxable year during which the qualified research is conducted.

9c.3.3.8 "Qualified research" means research and development conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for and increasing sales of this State's natural resource products or manufactured products, or both: Provided, That it shall not include:

9c.3.3.8.a Research or development conducted outside this State:

9c.3.3.8.b Research or development not directly related to increasing the uses for and sales of this State's natural resource products and industrial products;

9c.3.3.8.c Research in the social sciences or humanities; or

9c.3.3.8.d Research and development to the extent funded by any grant, contract or otherwise by another person (or any governmental entity).

9c.3.4 **Research by colleges, universities and certain research organizations.** - In general, sixty-five percent of the amount paid or incurred by a corporation to any nonprofit educational organization which is an institution of higher education, (as defined in Section 3304(f) of the Internal Revenue Code of 1986, as amended), an institution of higher education subject to the jurisdiction of the West Virginia Board of Regents or any successor or successors thereto, or any other nonprofit organization exempt from federal income taxes which is organized and operated primarily to conduct scientific research and is not a private foundation for federal income tax purposes for research to be performed by such organization shall be treated as contract research expenses. The preceding sentence shall apply only if the amount is paid or incurred pursuant to a written research agreement between the corporation and the qualified organization.

9c.3.5 **Standards for determining qualified research expenses.** - In prescribing standards for determining which research and development expenses are considered to be West Virginia qualified research expenses for purposes of this Section, the tax commissioner may consider:

9c.3.5.1 The place where the services are performed;

9c.3.5.2 The residence or business location of the person or persons performing the services;

9c.3.5.3 The place where qualified research supplies are consumed; and

9c.3.5.4 Other factors that the Tax Commissioner believes relevant in determining whether or not the research and development expenses, land and depreciable property were purchased and used for qualified research, as defined in ~~this article W. Va. Code article 24, chapter eleven~~ W. Va. Code § 11-24-1 et seq., during the taxable year.

§ 110-24-10. Reserved For Future Use.

§ 110-24-11. Credit For Reducing Electric And Natural Gas Utility Rates For Low Income Residential Customers.

11.1 **General.**

11.1.1 A credit is allowed against the primary corporation net income tax liability of a taxpayer which is a utility providing electric or natural gas utility service to qualified customers (eligible taxpayers) for the cost of providing electric or natural gas service or both to qualified low income residential customers, where such costs have not been reimbursed by any other means.

11.2 **Definitions.** - For purpose of this Section.

11.2.1 "Eligible taxpayer" means a utility which has provided electric or natural gas service, or both, to qualified low-income residential customers at special reduced rates.

11.2.2 "Cost of providing electric or natural gas utility service, or both, at special reduced rates" means the amount certified by the Public Service Commission under the provisions of W. Va. Code § 24-2A-3 as the revenue deficiency incurred by a public utility in providing special reduced rates for electric or natural gas utility service, or both, as required by W. Va. Code § 24-2A-1 et seq.

11.2.3 "Special reduced rates" means the rates ordered by the public service commission under W. Va. Code § 24-2A-1 et seq.

11.2.4 "Qualified low-income residential customers" means those utility customers eligible to receive electric or natural gas utility service, or both, under special reduced rates.

11.3 **Amount of credit.**

11.3.1 The amount of the credit available to any eligible taxpayer shall be equal to its cost of providing electric or natural gas service, or both, at special reduced rates to qualified residential customers, less any reimbursement of said cost which the taxpayer has received through any other means.

11.4 **When credit may be taken.**

11.4.1 An eligible taxpayer may claim a credit for reducing electric and natural gas utility rates for low-income residential customers on its annual return for the taxable year in which it receives certification of the amount of its revenue deficiency from the Public Service Commission.

11.4.2 No credit for reducing electric and natural gas utility rates for low-income residential customers may be claimed on any declaration of estimated tax filed for such taxable year prior to the first day of July of such taxable year. This credit may be claimed on a declaration or amended declaration filed on or after the first day of July of a taxable year only if the amount certified will not be recovered by the business and occupation tax credit allowed in W. Va. Code § 11-13-3f. In this event, only that amount not recovered by that credit may be considered or taken as a credit when estimating the corporation net income tax due. In no event may the eligible taxpayer recover more than one hundred percent of its revenue deficiency as certified by the Public Service Commission.

11.5 **Application of credit.**

11.5.1 The credit for reducing electric and natural gas utility rates for low income residential customers for a taxable year is not subject to a fifty percent limitation. Any unused credit may be carried over and applied against business and occupation taxes.

11.6 **Copy of certification order.**

11.6.1 A copy of a certification order from the Public Service Commission shall be attached to any annual return on which this credit is taken.

§ 110-24-11a. Credit For Reducing Telephone Utility Rates For Low Income Residential Customers.

11a.1 **General.**

11a.1.1 A credit is allowed against the primary corporation net income tax for the cost of providing telephone service at special reduced rates

to qualified low-income residential customers which has not been reimbursed by any other means.

11a.2 **Definitions for purposes of this section.**

11a.2.1 "Eligible taxpayer" is a utility which has provided telephone service to qualified low-income residential customers at special reduced rates.

11a.2.2 "Cost of providing telephone service at reduced rates" means the amount certified by the Public Service Commission under the provisions of W. Va. Code § 24-2C-2 as the revenue deficiency incurred by a telephone utility in providing telephone service at special reduced rates, as required by W. Va. Code § 24-2C-2.

11a.2.3 "Special reduced rates" means the rates ordered by the Public Service Commission under the authority of W. Va. Code § 24-2C-1.

11a.2.4 "Qualified low-income residential customers" means customers eligible to receive telephone service at special reduced rates.

11a.3 **Amount of credit.**

11a.3.1 The amount of the credit available to any eligible taxpayer shall be equal to its cost of providing telephone service at special reduced rates to qualified low-income residential customers less any reimbursement of such cost which the taxpayer has received through any other means.

11a.4 **When credit may be taken.**

11a.4.1 An eligible taxpayer may claim a credit allowed for reducing telephone utility rates for low-income residential customers on its annual return for the taxable year for which it receives certification of the amount of its revenue deficiency from the Public Service Commission.

No credit for reducing telephone utility rates for low-income residential customers may be claimed on any declaration of estimated tax filed for a taxable year prior to the first day of July of that taxable year. This credit may be claimed on a declaration or amended declaration filed on or after July 1 of a taxable year if, and only if, the amount certified will not be recovered by application of the tax credit for reducing telephone utility rates for certain low-income residential customers pursuant to W. Va. Code § 11-13G-1 **et seq.** In such event, only that amount not recovered by the tax credit allowed by W. Va. Code § 11-13G-1 **et seq.** may be considered or taken as a credit when estimating the tax due under this article. In no event may the eligible taxpayer recover more than one hundred percent of its revenue deficiency as certified by the Public Service Commission.

11a.5 **Application of credit.**

11a.5.1 The credit allowable herein for a taxable year is not subject to the fifty percent limitation specified in W. Va. Code § 11-24-9. Any unused credit may be carried over to the subsequent year and applied against the eligible taxpayer's tax liability in the manner specified in W. Va. Code § 11-13G-5.

11a.6 **Copy of certification order.**

11a.6.1 A copy of the certification order from the Public Service Commission shall be attached to any annual return on which a credit allowed herein is taken.

§ 110-24-12. Veteran's Incentive Tax Credit.

12.1 Every employer entitled to receive a tax credit against its West Virginia Corporation Net Income Tax liability as provided in W. Va. Code § 21A-2C-1 **et seq.** shall receive the credit for the period and in the amount specified in W. Va. Code § 21A-2C-1 **et seq.**

12.2 **Purpose.**

12.2.1 The purpose of this credit is to encourage employment in the private sector of veterans of the Vietnam era and of the Korean Conflict through a tax credit program for private sector employers who employ economically disadvantaged Vietnam era and Korean Conflict veterans and disabled veterans generally.

12.3 **Definitions for purposes of this section.**

12.3.1 "Active duty" means full-time duty in the armed forces of the United States of America, other than duty for training in the reserves or national guard. Any period of duty for training in the reserves or national guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active duty."

12.3.2 "Economically disadvantaged" means a person who:

12.3.2.1 Receives, or is a member of a family which receives, cash welfare payments under a federal, State or local welfare program; or

12.3.2.2 Has, or is a member of a family which has, received a total family income for the six months prior to application which, in relation to family size, was not in excess of the higher of the poverty level determined in accordance with criteria established by the federal Office of Management or Budget or seventy percent of the lower living standard income level; or

12.3.2.3 Is receiving food stamps pursuant to the Food Stamp Act of 1977; or

12.3.2.4 Is a foster child on behalf of whom State or local government payments are made; or

12.3.2.5 Is an adult handicapped individual whose own income meets the requirements of 12. 3.2.1 and 12. 3.2.2 of this definition, but who is a member of a family whose income does not meet such requirements.

12.3.3 "Korean Conflict veteran" means a person who served in the armed services of the United States at least one day during the period of time beginning June 27, 1950 and extending through January 31, 1955.

12.3.4 "Veteran" means a member of the United States armed forces who served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge or who was discharged and released from active duty because of a service connected disability.

12.3.5 "Vietnam era veteran" means a person who served in the armed forces of the United States at least one day during the period of time beginning August 5, 1964 and extending through May 7, 1975.

12.4 **Eligibility.**

12.4.1 Each person, partnership or corporation which employs an economically disadvantaged Vietnam era or Korean conflict veteran or a disabled veteran for a continuous period of one year is entitled to the tax credit provided herein, subject to the terms and conditions set forth herein.

In the case of a corporation so employing a veteran, the tax credit provided for in this Section shall be applied against its corporation net income tax liability. This tax credit shall be nonassignable and may not exceed an employer's total tax liability with respect to the specific tax against which the tax credit is required to be applied.

12.5 **Amount of credit.**

12.5.1 The amount of the credit provided in Subsection 12.4 of these regulations shall be an amount equal to the total of Subsections 12.5.1.1 and 12.5.1.2. of these regulations.

12.5.1.1 For each economically disadvantaged Vietnam era or Korean conflict veteran employed for a continuous period of one year, the amount of the tax credit allowed is thirty percent of such employee's wage base. For the purposes of this Section, the employee's wage base is the first two thousand dollars in wages or compensation actually paid to the employee by the employer.

12.5.1.2 For each disabled veteran employed for a continuous period of one year, the amount of the tax credit allowed is a percentage of disability suffered by the veteran multiplied by the employee's wage base. The employee's wage base is the same as provided in Section 12.5.1.1. The percentage of disability referred to in this Section means the percentage of compensation for

service-connected disability determined by the Veterans Administration of the United States.

12.6 **Restrictions and limitations.**

12.6.1 An employer may not claim a tax credit provided for in this article for any veteran employed for less than a continuous period of one year, unless:

12.6.1.1 The veteran voluntarily leaves employment with the employer; or

12.6.1.2 The veteran becomes totally disabled and unable to continue his employment; or

12.6.1.3 The veteran is terminated for good cause shown.

In the event that the veteran is employed for less than a one-continuous-year period due to circumstances enumerated in 12.6.1.1, 12.6.1.2 and 12.6.1.3 above, the employer shall be entitled to a partial tax credit in a proportional amount corresponding to the ratio of the time period during which the veteran was actually employed to the one-year period required for a full tax credit.

12.6.1.4 **Example.** - A disadvantaged Vietnam era veteran is employed by a taxpayer for 214 days before the veteran leaves employment with the taxpayer for a new job with a different employer. During the time of his employment the veteran was paid over two thousand dollars ($2,000) in gross wages.

The amount of the credit for the full year would have been 30% X $2,000 or $600. The allowable credit for the partial year is 214/365 X $600 or $351.78.

12.6.2 An employer may not claim tax credit provided for in this article for any veteran who is employed and displaces a person already employed. In addition, no tax credit may be claimed for the employment of any veteran for whom the employer is receiving job training payments from either the federal or State government. Nothing in this Section prohibits an employer from receiving tax credits from both the federal and state governments under similar targeted jobs programs if the employer is otherwise qualified to receive both.

§ 110-24-13. Returns; Time For Filing.

13.1 On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under W. Va. Code § 11-24-1 et seq. shall be made and filed by or for every corporation subject to the tax imposed by that article.

§ 110-24-13a. Method For Filing.

13a.1 **Privilege to file.**

13a.1.1 An "affiliated group" of corporations, as defined for purposes of filing a consolidated federal income tax return, is subject to the provisions of W. Va. Code § 11-24-13a and this rule. Such an affiliated group has the privilege of filing a consolidated return for a taxable year for purposes of the Corporation Net Income Tax. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group and which are included in such return consent to the filing of such return. The filing of a consolidated return shall be deemed as constituting such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for that part of the year it is a member of the affiliated group.

13a.2 **Election binding.**

13a.2.1 If an affiliated group of corporations elects to file a consolidated return for the West Virginia Corporation Net Income Tax for any taxable year ending after June 30, 1987, such election, once made, may not be revoked by the taxpayer for any subsequent taxable year without the written approval of the Tax Commissioner consenting to the revocation.

13a.2.2 A taxpayer shall request a change in such election by a written communication. Such communication must be received by the Tax Commissioner no later than one hundred days prior to the time the return is due, with regard to extensions.

13a.3 **Computation and payment of tax.**

13a.3.1 In any case in which a consolidated return is filed, or is required to be filed, the affiliated group shall be treated as the taxpayer or in the case of parent/subsidiary consolidations, the parent shall be treated as the taxpayer.

13a.4 **Consolidated return required.**

13a.4.1 If any affiliated group of corporations has not elected to file a consolidated return, the Tax Commissioner may require such corporations to make a consolidated return in order to clearly reflect the taxable income of such corporation.

13a.5 **Special rule for consolidated filings where a taxable year includes a time period prior to July 1, 1987.**

13a.5.1 Where a consolidated West Virginia Corporation Net Income Tax return is filed for a taxable year that includes a time period prior to July 1, 1987, and ends after that date, and the consolidated group includes a corporation or corporations taxable for the entire period and a corporation or corporations that became taxable on July 1, 1987, a unique situation exists. To fairly and equitably determine the tax liability for the consolidated group for the taxable year, the following method of computation may be necessary.

13a.5.1.1 A determination must be made as to the composition of the West Virginia taxable income, identifying, to the extent included therein, the taxable income of the corporation or corporations subject to the West Virginia Corporation Net Income tax for the entire filing period and the extent of the inclusion therein of the taxable income of the corporation or corporations that become taxable on July 1, 1987. The total of those two amounts should equal the West Virginia taxable income of the consolidated group.

A schedule showing the method used to determine the composition of the West Virginia taxable income must be attached to the West Virginia return filed. For example, the schedule could show the federal taxable income of each corporation as it was included in the consolidated federal return. The federal taxable income of each entity should then be adjusted for filing requirements of West Virginia Corporation Net Income tax law such as distribution within the consolidated group of increasing and decreasing modifications to each entity as applicable. The sum of the "West Virginia taxable income" of all entities should equal the West Virginia taxable income on the consolidated return.

The tax computation schedule (Schedule G) of the 1987 West Virginia return can be used to determine the tax liability, with modification. The West Virginia taxable income used for the computation on line 5 (A) and (B) should only be that part of the total West Virginia taxable income as earlier determined to be the West Virginia taxable income of the corporation(s) subject to the corporate tax for the entire taxable year. The West Virginia taxable income used for the computation on line 6 (A) should be the total West Virginia taxable income. The sum of these computations, after application of the pro rate factor, is the tax liability for the taxable year.

§ 110-24-13b. Information Return For Corporations Electing To Be Taxed Under Subchapter S.

13b.1 Every corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1986, as amended, shall on or before the fifteenth day of the third month following the close of the taxable year file an information return for each tax year, stating specifically the items of its gross income and the deductions allowable, the names and addresses of all persons owning stock in the corporation at any time during the tax year, the number of shares of stock owned by each shareholder at all times during the tax year, the amount of money and other property distributed by the corporation during the tax year to each shareholder, the date of each such distribution, and such other information as the Tax Commissioner may prescribe on the tax forms. Corporations failing to file information returns by the due date as prescribed in this Section shall be subject to a penalty of fifty dollars for each failure to file, with such penalty being collected as other penalties are collected by the tax commissioner.

§ 110-24-14. Time And Place For Filing Returns And Paying Tax.

14.1 A person required to make and file a return under this article shall pay any tax shown to be due by such return, without assessment, notice or demand, to the tax commissioner on or before the date fixed for filing such

return determined without regard to any extension of time for filing the return. Returns, statements, or any documents required to be filed under W. Va. Code § 11-24-1 et seq. and any payments required pursuant to ~~Article 24, Chapter 11 of the Code of West Virginia;~~ W. Va. Code § 11-24-1 et seq. shall be mailed to the State Tax Department in accordance with the instructions accompanying the returns or to the State Tax Department; Accounting Division; Corporation Net Income Tax Section; Post Office Drawer 1202; Charleston, West Virginia 25324-1202.

14.2 In circumstances where a remittance (or remittances) of tax accompanying, or relating to a combined tax return for both the business franchise tax and the corporation net income tax is paid to the Tax Department, whether in the form of separate checks for each tax or in the form of a single check or in any other form, the remittance or remittances of tax shall first be applied against the taxpayer's corporation net income tax liability, and only after the corporation net income tax liability has been fully satisfied will the remainder of the said remittance or remittances then be applied against the business franchise tax liability.

§ 110-24-15. Signing Of Returns And Other Documents.

15.1 Any return, statement or other document required to be made pursuant to this article shall be filed in accordance with instructions prescribed by the tax commissioner accompanying such return. The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him. The fact that a return, statement or other document is signed by an officer of a corporation shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the corporation.

15.2 The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this article, including a copy of a federal return, shall constitute a certification by the person, corporation or officer making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 110-24-16. Declarations Of Estimated Tax.

16.1 Requirement of declaration.

16.1.1 Every corporation subject to tax under W. Va. Code § 11-24-1 et seq. shall make a declaration of estimated tax for the taxable year if its West Virginia taxable income can be reasonably expected to exceed ten thousand dollars.

16.2 Definition of estimated tax.

16.2.1 The term "estimated tax" means the amount which a corporation estimates to be its income tax under W. Va. Code § 11-24-1 et seq.

for the taxable year, less an amount which such corporation estimates to be the sum of any credits allowable against the tax.

16.3 **Contents of declaration.**

16.3.1 The declaration shall contain such pertinent information as the Tax Commissioner may by forms or regulations prescribe, including, but not limited to, such detailed information as may be necessary to clearly reflect the estimated West Virginia taxable income of the corporation for the taxable year.

16.4 **Amendment of declaration.**

16.4.1 A corporation may make amendments of a declaration filed during the taxable year.

16.5 **Time for filing declaration.**

16.5.1 If the requirements of Subsection 16.1 are first met before the first day of the fourth month of the taxable year a declaration of estimated tax of a corporation shall be filed on or before the fifteenth day of the fourth month of the taxable year, except that if the requirements of Subsection 16.1 are first met

16.5.1.1 After the last day of the third month and before the first day of the sixth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the sixth month of the taxable year, or

16.5.1.2 After the last day of the fifth month and before the first day of the ninth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the ninth month of the taxable year, or

16.5.1.3 After the last day of the eighth month and before the first day of the twelfth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the twelfth month of the taxable year.

16.6 **Declaration of estimated tax of one hundred dollars or less.**

16.6.1 A declaration of estimated tax of a corporation having a total estimated tax for the taxable year of one hundred dollars or less may be filed at any time on or before the fifteenth day of the first month of the succeeding taxable year.

16.7 **Return as declaration or amendment.**

16.7.1 If on or before the fifteenth day of the second month of the succeeding taxable year a corporation files its return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

16.7.1.1 Such return shall be considered as such corporation's declaration, if no declaration was required to be filed during the taxable year,

but is otherwise required to be filed on or before the fifteenth day of the first month of the succeeding taxable year.

16.7.1.2 Such return, if filed on or before such applicable date shall be considered an amendment permitted by Subsection 16.4 if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

§ 110-24-17. Payments Of Estimated Tax.

17.1 **Installment payments.**

17.1.1 The estimated tax of a corporation with respect to which a declaration is required shall be paid as follows:

17.1.1.1 If the declaration is filed on or before the fifteenth day of the fourth month of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall he paid on the following 15th day of the sixth, ninth and twelfth months of the taxable year, respectively.

17.1.1.2 If the declaration is filed after the 15th day of the fourth month and not after the 15th day of the sixth month of the taxable year, and is not required to be filed on or before the fifteenth day of the fourth month of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following 15th day of the ninth and twelfth months of the taxable year, respectively.

17.1.1.3 If the declaration is filed after the fifteenth day of the sixth month and not after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the sixth month of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following fifteenth day of the twelfth month of the taxable year.

17.1.1.4 If the declaration is filed after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the ninth month of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

17.1.1.5 If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, subdivisions 17.1.1.2, 17.1.1.3, and 17.1.1.4 of this Subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

17.2 **Amendments of declaration by any corporation.**

17.2.1 If any amendment of a declaration is filed by a corporation, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

17.3 **Application to short taxable year.**

17.3.1 This Section shall apply to a taxable year of less than twelve months as well as twelve month years.

17.4 **Installment paid in advance.**

17.4.1 Any corporation may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.

§ 110-24-18. Extensions Of Time.

18.1 **General.**

18.1.1 The Tax Commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as he may require.

18.2 **Amount determined as deficiency.**

18.2.1 The Tax Commissioner may extend the time for payment of an amount determined as a deficiency for a period not to exceed eighteen months from the date designated for payment of the deficiency, and under exceptional circumstances, for a further period not to exceed twelve months. An extension under this Subsection may be granted only where it is established to the satisfaction of the Tax Commissioner that the payment of a deficiency upon the date designated for payment would result in undue hardship. No extension shall be granted if any part of the deficiency is due to intentional disregard of rules and regulations or to fraud.

18.3 **Claims in bankruptcy or receivership proceedings.**

18.3.1 Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax.

18.4 **Furnishing of security.**

18.4.1 If any extension of time is granted for payment of any tax or deficiency, the tax commissioner may require the taxpayer to furnish a bond

or other security in an amount not exceeding the amount for which the extension of time for payment is granted on such terms and conditions as the Tax Commissioner may require.

§ 110-24-19. Requirements Concerning Returns, Notices, Records And Statements.

19.1 General.

19.1.1 The Tax Commissioner may set requirements as to the keeping of records, the contents and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The Tax Commissioner may require any corporation, by notice served upon such corporation, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such corporation is liable under this article for tax.

19.2 Information of source.

19.2.1 The Tax Commissioner may prescribe instructions requiring returns of information to be made by any person, including lessees or mortgagers of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

19.3 Notice of qualifications as receiver, etc.

19.3.1 Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice in writing of his qualification as such to the Tax Commissioner within 90 days of qualification, and shall attach a copy of his appointment as such fiduciary to such written notice. Notice shall be sent to: The State Tax Commissioner, P. O. Drawer 2389, Charleston, WV 25328.

19.4 Federal return information.

19.4.1 As part of a full and complete tax return, the taxpayer shall provide:

19.4.1.1 A copy of pages one through four of its federal corporation income tax return, as filed with the Internal Revenue Service for the taxable year; and

19.4.1.2 If a consolidated federal income tax return is filed for the taxable year:

19.4.1.2.a Supporting schedules showing the consolidation of its income statement and balance sheets, including schedules

supporting any eliminations and adjustments made to the income statement and balance sheets;

19.4.1.2.b A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership and

19.4.1.2.c A statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal consolidated filing purposes and the income statement and the balance sheet reported to this State under the tax imposed by W. Va. Code § 11-24-1 et seq.

§ 110-24-20. Report Of Change In Federal Taxable Income.

20.1 If the amount of a taxpayer's federal taxable income reported on its 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 file an amended West Virginia return to report such change or correction in federal taxable income within ninety 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. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this article, and shall give such information as the Tax Commissioner may require. The Tax Commissioner may by regulation prescribe such exceptions to the requirements of this Section as he deems appropriate.

§ 110-24-21. Change Of Election.

21.1 General.

21.1.1 Any elections made by a taxpayer in determining its corporation net income tax liability may be revoked, unless expressly stated by statute to be irrevocable.

21.2 Net operating losses.

21.2.1 Where a taxpayer elects to carryback a net operating loss and such taxpayer had taken a business and occupation tax credit or severance tax credit in a prior year to which a net operating loss is carried back, such taxpayer may elect instead to take a deduction for that prior year. A taxpayer may make such an election for only those tax years for which the general statute of limitations for filing amended returns claiming a refund as prescribed by W. Va. Code § 11-10-14(1) has not run.

§ 110-24-22. Reserved For Future Use.

§ 110-24-23. Credit For Consumers Sales And Service Tax And Use Tax Paid.

23.1 The tax imposed by W. Va. Code § 11-24-1 et seq. shall be subject to the credit set forth in ~~Section nine-b, article fifteen of this chapter~~ W. Va. Code § 11-10-9b, and the credit set forth in ~~Section three-b, article fifteen-a of this chapter~~ W. Va. Code § 11-15-3b.

§ 110-24-23a. Credit For Qualified Rehabilitated Buildings Investment.

A credit against the tax imposed by the provisions of W. Va. Code article 24, chapter 11 shall be allowed as follows:

23a.1 **Certified historic structures.** - For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in § 47(c)(2), Title 26 of the United States Code, as amended. This credit is available for both residential and nonresidential buildings located in this State that are reviewed and approved for this credit by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as "certified historic building," and further defined as a "qualified rehabilitated building," as defined under § 47(c)(1), Title 26, of the United States Code, as amended.

§ 110-24-23b. Definitions.

23b.1 "Certified historic structure" means any building located in this State that is listed individually in the National Register of Historic Places or located in a registered historic district, reviewed by the West Virginia Division of Culture and History and certified by the National Park Service as being of historic significance to the district.

23b.2 "Certified rehabilitation" means any rehabilitation of a certified historic structure that is reviewed by the West Virginia Division of Culture and History, and certified by the National Park Service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

23b.3 "Historic district" means any district that is listed in the National Register of Historic Places or designated under a state or local statute which has been certified as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district and which is certified as substantially meeting all of the requirements for listing of districts in the National Register of Historic Places.

23b.4 "Historic preservation certification application" means application forms published by the National Park Service, United States Department of the Interior, Parts 1, 2 and 3, Form No. 10-168.

23b.5 "Secretary of the interior standards" means standards and guidelines adopted and published by the National Park Service, United States Department of the Interior, for rehabilitation of historic properties.

23b.6 "State historic preservation officer" means the State official designated by the Governor pursuant to provisions in the National Historic Preservation Act of 1966, as amended and further defined in W. Va. Code § 29-1-6.

§ 110-24-23c. Procedures.

23c.1 Application and processing procedures for provisions of this section shall be the same as any required under provisions of Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1. Successful completion of a historic preservation certification application shall automatically qualify the applicant to be considered for tax credits under this Section.

23c.2 Successful certification by the National Park Service of a rehabilitation of a building that results in such building being a "qualified rehabilitated building" within the meaning of § 47(c)(1), Title 26 of the United States Code, and amendments thereto, shall automatically qualify the applicant for tax credits under this section. The State historic preservation officer's role in the application procedure shall be identical to that in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1.

23c.3 No tax credit shall be allowed or taken by any taxpayer under W. Va. Code §§ 11-24-23a, 23b, 23c, 23e or 23f for rehabilitation expenditures made prior to June 6, 1990.

§ 110-24-23e. Carryback, Carryforward.

23e.1 Any unused portion of the credit for qualified rehabilitated buildings investment authorized by W. Va. Code § 11-24-23a which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under § 39, Title 26 of the United States Code, as amended: **Provided**, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year.

§ 110-24-23f. Termination Of Credit By Law.

23f.1 The tax credit allowed by W. Va. Code § 11-24-23a shall be terminated on December 31, 1994, unless review of the tax credit shall be undertaken pursuant to the provisions of W. Va. Code §§ 4-10-9, 10 and 11: **Provided**, That for those rehabilitation projects for which a completed Part 2 (Description of Rehabilitation) of the historic preservation certification application was filed with the West Virginia Division of Culture and History prior to that date and subsequently approved in accordance with W. Va. Code § 11-24-23c, the credit shall continue to be allowed pursuant to W. Va. Code article 24, chapter 11.

§ 110-24-24. Credit For Income Tax Paid To Another State.

24.1 Effective for taxable years beginning on or after January 1, 1991, and notwithstanding any provisions of the West Virginia Code to the contrary, any financial organization, the business activities of which take place, or are deemed to take place, entirely within this State, shall be allowed a credit against the tax imposed by W. Va. Code § 11-24-1 et seq. for any taxable year for taxes paid to another state or political subdivision thereof. That credit shall be equal in amount to the lesser of:

24.1.1 The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by W. Va. Code § 11-24-1 et seq. to any other state or political subdivision thereof, and which tax was based upon or measured by the financial organization's net income and was paid with respect to the same taxable year; or

24.1.2 The amount of such tax the financial organization would have paid if the rate of tax imposed by W. Va. Code § 11-24-1 et seq. is applied to the tax base determined under the law of such other state or political subdivision.

Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in Section 24 and the subsections thereof of these regulations, and any refunds of such taxes, made or received by such financial organization with respect to the taxable year, but after the due date of the annual return required by W. Va. Code § 11-24-1 et seq. for the taxable year, including any extensions, shall likewise be accounted for in the taxable year in which such additional payment is made or such refund is received by the financial organization.

§ 110-24-25. Reserved for future use.

§ 110-24-26. Priority of Tax in Distributions of Property and Estates.

26.1 In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid under W. Va. Code § 11-24-1 et seq. shall be paid from the first money available for distribution in priority to all claims and liens except taxes and debts due the United States which under federal law are given priority over the debts and liens created by W. Va. Code § 11-24-1 et seq. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under W. Va. Code § 11-24-1 et seq. which are chargeable against the person whose property or estate is in administration or distribution.

26.2 There is a priority for all unpaid corporation net income tax in distributions of the property or estate of any person, and the tax must be paid from the first money available for distribution in priority to all other claims and liens, except taxes and debts due the United States.

26.2.1 The distribution of property subject to federal tax liens is subject to the priority of such liens provided in the Internal Revenue Code.

26.2.2 The distribution of property in federal bankruptcy proceedings is subject to the priorities of debts and liens provided in the United States Bankruptcy Code (11 U.S.C. § 101 et seq.).

26.2.3 This priority applies to the amount of tax, interest, additions to tax, and penalties.

26.3 The priority applies to all distributions of the property or estate of any person. A "distribution" of property of an estate is the sale or transfer of the property, or the disbursement of money resulting from the sale or transfer of the property or estate of any person. Distributions include, but are not limited to, the transfer of property or disbursement of proceeds of sales of property by any executor, administrator, receiver, trustee, fiduciary, special commissioner, or any public officer under judicial process; and distributions in any proceedings such as bulk sale, liquidation sale, estate sale, assignment for the benefit of creditors, intepleader action, and administrative or judicial proceeding for the dissolution of a partnership or corporation.

26.4 The priority does not apply to transactions that do not constitute distributions of property. These transactions include the sale or transfer of property in the ordinary course of the business of the owner of the property; sales or transfers of any property by the owner or for consideration payable to the owner by the purchaser or transferee.

26.5 This priority applies to the distribution of all property, including but not limited to real property or any interest therein; tangible personal property, inlcuding fixtures, equipment, machinery, furniture and vehicles; intangible property, including accounts receivable, contract rights, bank accounts, stocks, bonds; and the proceeds from the sale or liquidation of any such property.

26.6 This priority requires payment of the tax from the first money that is available for distribution to lienors, creditors, beneficiaries, or any other person, after payment of costs, commissions, fees and any other expenses incurred in the preservation, storage, liquidation, or transportation of the property or estate.

26.7 The debt or claim for taxes has priority over all claims and liens, except debts due the United States.

26.7.1 Claims subject to this priority include any debt or obligation, liquidated or unliquidated, that does not constitute a lien upon the property or estate.

26.7.2 Liens subject to this priority include any charge or encumbrance on the property or estate for payment of any claim, debt or obligation, such as a deed of trust, judgment lien, security interest, vendors lien, execution lien, tax lien, mechanics lien, landlords lien and municipal lien.

26.7.3 The priority of the corporation net income tax debt in such distributions is not determined by the presence or absence of a perfected notice of tax lien, by the presence or absence of a perfected lien securing any competing claim or debt, or by the order in which any such competing liens were perfected.

~~§ 110-24-24~~ § 110-24-27 through § 110-24-39. Reserved For Future Use.

§ 110-24-40. Severability.

40.1 Severability.

40.1. If any provision of these regulations or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said regulations, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§ 110-24-41. General Procedure And Administration.

41.1 Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in W. Va. Code § 11-10-1 et seq. shall apply to the tax imposed by these regulations with like effect as if said act were applicable only to the tax imposed by ~~these regulations~~ W. Va. Code § 11-24-1 et seq. and were set forth in extenso in ~~this article twenty-four~~ W. Va. Code § 11-24-1 et seq.

WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
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SECRETARY OF STATE

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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

December 10, 1991

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. L. Frederick Williams, Jr.
Secretary of Tax and Revenue
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Corporation Net Income Tax

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
   (a) as originally filed ____
   (b) as modified by the agency X

2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. ____

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____

5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. ____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Mark Morton, Tax Division
John Montgomery, Tax Division