



State Tax Department  
of West Virginia

JOHN D. ROCKEFELLER IV  
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Charleston 25305

HERSCHEL H. ROSE III  
TAX COMMISSIONER

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DEPUTY COMMISSIONER

Telephone  
(304)348-2501

September 28, 1984

Honorable A. James Manchin  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

Dear Mr. Manchin:

Attached are two copies, in final form, of proposed amendments to existing legislative regulations on the Corporation Net Income Tax, W. Va. Leg. Reg. (CNIT) 11-10, Ser. XXIV (1973).

These proposed legislative amendments relate to declarations of estimated tax (Section 16), installment payments of estimated tax (Section 17), interest and additions to tax on underpayments of estimated tax (Section 17a) and extensions of time for filing returns and the documents and paying tax (Section 18).

A public hearing was held in Charleston on these proposed amendments on June 8, 1984, but no member of the public attended. Written comments were received through June 15, 1984, and copies of all comments received are attached.

Very truly yours,

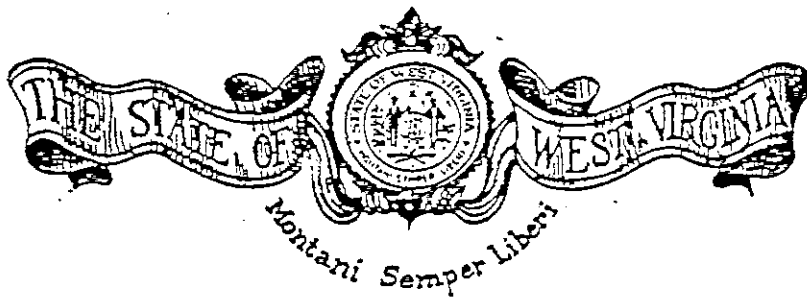
Herschel H. Rose III  
State Tax Commissioner

HHR/mmj

Attachments

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE 9-28-84  
Administrative Law Division



OFFICE OF THE SECRETARY OF STATE

A. JAMES MANCHIN  
CHARLESTON 25305

THE STATE CAPITOL

STATE REGISTER FILING

ROBERT W. JACKSON  
DEPUTY SECRETARY OF STATE  
CORPORATE AFFAIRS

I, Herschel H. Rose III, State Tax Commissioner Title or Position

State Tax Commissioner, hereby submit to records in the State Register on 8 1/2 x 11" two (2) copies of

- ( X ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ( X ) proposed rules and regulations superseding rules and regulations already on file;
- ( ) notice of hearing;
- ( ) findings and determinations;
- ( ) Emergency rules and regulations
- ( X ) Legislative ( ) Procedural ( ) Interpetive regulations
- ( ) other - specify \_\_\_\_\_

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE 9-28-84  
Administrative Law Division

This filing pertains to

CHAPTER 11 ARTICLE 24 SECTION 16,17,17a, & 18 of the West Virginia Code, 1931, as amended.

SERIES XXIV, SECTION 16,17,17a,&18 PAGE NO. 1 to 71.17 of the Administrative Code.

ADMINISTRATIVE CODE.

September 28, 1984  
Date Submitted

Herschel H. Rose III  
Signature of Person Authorizing this Filing



State Tax Department  
of West Virginia

Charleston 25305

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JOHN D. ROCKEFELLER IV  
GOVERNOR

September 28, 1984

NOTICE OF AGENCY APPROVAL  
of  
PROPOSED LEGISLATIVE RULE

Legislative Rule: Proposed amendments to W. Va. Leg. Reg. (CNIT)  
11-10, Ser. XXIV, §§ 16, 17, 17a, and 18 of the  
Corporation Net Income Tax Regulations

The above titled legislative rule constitutes the official  
rule approved by the Tax Department on September 28, 1984, and  
filed pursuant to law in the Office of the Secretary of State,  
State of West Virginia.

Herschel H. Rose III  
State Tax Commissioner

Entered

Sept 25, 1984

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 9-28-84  
Administrative Law Division



State Tax Department  
of West Virginia  
Charleston 25305

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JOHN D. ROCKEFELLER IV  
GOVERNOR

September 28, 1984

NOTICE OF SUBMISSION OF  
PROPOSED LEGISLATIVE RULE TO  
WEST VIRGINIA LEGISLATIVE  
RULE-MAKING REVIEW COMMITTEE

Legislative Rule: Proposed amendments to W. Va. Leg. Reg. (CNIT)  
11-10. Ser. XXIV, §§ 16, 17, 17a and 18 of the  
Corporation Net Income Tax Regulations.

The above titled legislative rule is hereby submitted to the  
Legislative Rule-Making Committee in conformity with W. Va. Code  
§ 29A-3-11.

  
Herschel H. Rose III  
State Tax Commissioner

Sept 25, 1984 Entered



**State Tax Department  
of West Virginia**

Charleston 25305

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JOHN D. ROCKEFELLER IV  
GOVERNOR

FISCAL NOTE

Re: Fiscal Note to Proposed Amendments to W. Va. Leg. Reg.  
11-10, Ser. XXIV (1973)

The purpose of these proposed amendments to legislative regulations pertaining to the corporation net income tax is to clarify and make more specific existing regulations on the filing of declarations of estimated tax (Section 16), paying tax in installment payments (Section 17) and granting extensions of time for filing returns and other documents and paying tax (Section 18). Secondly, new regulations would be added concerning the application of interest and additions to tax for failure to file declarations of estimated tax when required by law, for under estimating tax liability and for failure to make installment payments of estimated tax as required by law (Section 17a).

In compliance with W. Va. Code § 29A-3-4 the itemized cost of implementing these proposed amendments as they relate to this State and to corporations affected by these rules and regulations is as follows:

A. Cost to State.

The administrative costs associated with implementing these proposed legislative regulations are insignificant.

B. Cost to Taxpayers.

The cost to taxpayers associated with implementing these proposed legislative regulations will be nominal.

Submitted to the State Register on September 28, 1984, in compliance with W. Va. Code §§ 29A-3-5 and 29A-3-9.

Herschel H. Rose III  
Tax Commissioner

PROPOSED AMENDMENTS  
WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
STATE TAX DEPARTMENT

Chapter 11-10  
Series XXI  
(1983)

Subject:     - Personal Income Tax -- Rules for filing  
              declarations of estimated personal income  
              tax, making installment payments of such  
              tax, imposition of interest and additions  
              to tax for noncompliance and providing  
              "safety zones" for when interest and addi-  
              tions will not be imposed.

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Effective:   September 28, 1984

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 9-28-84  
Administrative Law Division

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<u>Regulation</u>	<u>Code Section</u>
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Section 16.	11-24-16
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Section 18.	11-24-18

PROPOSED AMENDMENTS

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10  
Series XXIV  
(1973)

Subject: Corporation Net Income Tax; Declarations of Estimated Tax; Installment Payments of Estimated Tax; Interest Additions to Tax for Failure to Timely File Declarations or Pay Estimated Tax and For Failure to Properly Estimate or Remit Tax, and to Extensions of Time for Filing Returns, Declarations and Other Documents for Payment of Tax.

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Section 1. GENERAL.

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

1.02. Scope. -- These regulations establish general guidelines and clarification of the Corporation Net Income Tax. The proposed amendments relate specifically to declarations of estimated tax (Section 16), installment payments of estimated tax (Section 17), interest and

additions to tax for failure to timely file declarations or pay estimated tax and for failure to properly estimate or remit tax (Section 17a), and extensions of time for filing returns, etc. and paying tax

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

1.04. Filing Date. -- These regulations were promulgated on November 30, 1973, and filed on November 30, 1973, in the Office of the Secretary of State and refiled in the aforesaid office on December 29, 1982, in compliance with W. Va. Code § 29A-2-5 (1982). These proposed amendments were filed in the State Register on May 8, 1984.

1.05. Effective Date. -- These regulations became effective on January 1, 1974. These proposed amendments will take effect thirty days after their refiling in the State Register pursuant to an act of the Legislature authorizing their promulgation

1.06. Citation. -- These regulations may be cited as:

W. Va. Leg. Reg. (CNIT) 11-10  
Ser. XXIV, § \_\_\_\_\_, page \_\_\_\_\_ (1973)  
as amended.

1.07. Strike-throughs and Underscoring. --

Underscoring indicates language that is new. Strike-throughs indicate language that is being superceded.

Section 16 is rewritten. All existing language is struck through. Underscoring of new language has been omitted.

Section 17 is rewritten. All existing language is struck through. Underscoring of new language has been omitted.

Section 17a is new. Therefore, underscoring has been omitted.

Section 18 is amended.

Section 16.01(a)

Section-16. Declaration of Estimated Tax.

- 16.01. Requirement of Declaration.
- 16.02. Definition of Estimated Tax.
- 16.03. Contents of Declaration.
- 16.04. Amendment of Declaration.
- 16.05. Time for Filing Declaration.
- 16.06. Automatic Extension of Time for Filing Declarations of Estimated Tax of \$600 or Less.
- 16.07. Return as Declaration or Amendment.
- 16.08. Short Taxable Year.

16.01. Requirement of Declaration.

(a) Every corporation subject to the West Virginia Corporation Net Income Tax Act is required to make and file a declaration of estimated tax for the taxable year if its West Virginia taxable income can reasonably be expected to exceed ten thousand dollars (\$10,000). See W. Va. Code § 11-24-16(a).

(b) A corporation that will owe tax of six hundred dollars (\$600) or less for the taxable year is not required to file a declaration of estimated tax until the due date of its annual return for that taxable year, and its annual return shall constitute its declaration. See Section 16.06 of these regulations.

(c) In determining whether a declaration of estimated tax is required, the corporation shall take into account the

Section 16.01(d)

then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective gross income, allowable deductions, and estimated credits for the taxable year.

(d) When Preceding Year Was a Loss Year.

(1) In general. -- If the corporation had zero or negative West Virginia taxable income for the preceding taxable year, a declaration of estimated tax is not required to be filed for the current taxable year until such time as the corporation can reasonably estimate that its West Virginia taxable income for the current tax year will exceed ten thousand dollars (\$10,000) and that its estimated tax liability will exceed six hundred dollars (\$600).

(2) Exceptions. -- The preceding paragraph does not apply when the zero or negative West Virginia taxable income in the preceding taxable year was due to:

(A) the expensing of air or water pollution control facilities as provided in W. Va. Code § 11-24-6(e);

(B) the carry forward of a loss from a preceding taxable year unless the loss

Section 16.01(d)

will also be carried forward to the current taxable year with like effect.

(C) unusual events or occurrences not reasonably expected to affect the current taxable year with like effect.

Section 16.02

16.02. Definition of "Estimated Tax." -- The term "estimated tax" means the amount which a corporation estimates to be its income tax liability under W. Va. Code § 11-24-4, on its West Virginia taxable income for the taxable year, less the amount which the corporation estimates to be the sum of any credits allowable against the tax for the taxable year. See W. Va. Code § 11-24-16(b). The term "income tax" includes both the primary tax and the temporary surtax imposed by W. Va. Code § 11-24-4. Allowable credits include those allowable under W. Va. Code § 11-24-9 (relating to credits for business and occupation taxes and carrier income taxes), § 11-24-10 (relating to targeted credit for new jobs), § 11-24-11 (relating to credit for reducing electrical and natural gas utility rates for low-income residential customers during the heating season) and § 11-24-12 (relating to the credit for hiring disadvantaged Vietnam era or Korean conflict veterans or disabled veterans). Credit may also be claimed for overpayment of corporation net income tax for the preceding taxable year provided the annual return for such year is filed on or before the date the declaration of estimated tax is due for the succeeding taxable year.

Section 16.03(a)

16.03. Contents of Declaration.

(a) General. -- The declaration of estimated tax shall be made on Form 112-ES. The amount of estimated tax shall be based on the amount of West Virginia taxable income which the taxpayer expects to receive or accrue, as the case may be, depending upon the method of accounting used for federal income tax purposes for the taxable year. (See W. Va. Code § 11-24-8(c) for allowable methods of accounting.) The amount of estimated tax is a combination of the primary tax reduced by the amount of allowable credits, plus the surtax, for the taxable year. See W. Va. Code § 11-24-16(c).

(b) The amount of West Virginia taxable income and allowable credits shall be determined based upon the facts and circumstances existing at the time prescribed by law for filing the declaration, as well as those reasonably to be anticipated for the taxable year relating to prospective gross income, allowable deductions and allowable credits.

(c) Use of Prescribed Form.

(1) Copies of Form 112-ES so far as possible will be furnished to taxpayers by the Tax Commissioner. A taxpayer will not be excused from making a declaration, however, by the fact that no form has been furnished. Taxpayers not supplied with the proper forms should write or call the

Section 16.03(c)

Business Tax Division to request the proper form in ample time to receive the forms and to have their declaration prepared, verified and filed with the Tax Commissioner on or before the date prescribed for filing the declaration.

(2) If the taxpayer does not have the prescribed form, a statement disclosing the estimated West Virginia corporation net income tax must be filed as a tentative declaration within the prescribed time, accompanied by the payment of the required installment. This tentative declaration must be supplemented, without unnecessary delay, by a declaration made on the proper form.

(d) Allowable Tax Credits. -- The amount of a corporation's allowable tax credits for the taxable year may be deducted in computing estimated tax. These include the following:

(1) West Virginia business and occupation taxes. See W. Va. Code § 11-24-9(a), and Section 9 of these regulations.

(2) West Virginia annual tax on incomes of certain carriers. See W. Va. Code § 11-24-9(b), and Section 9 of these regulations.

Section 16.03(d)

(3) West Virginia targeted jobs credit. See W. Va. Code § 11-24-10, and Section 10 of these regulations.

(4) West Virginia credit for reducing electrical and natural gas utility rates for low-income residential customers. See W. Va. Code § 11-24-11, and Section 11 of these regulations.

(5) Overpayment of corporation net income tax from a prior year, but only if the annual return for such prior year was filed on or before the date the declaration or amended declaration was filed claiming the credit.

(6) West Virginia credit for hiring disadvantaged Vietnam era or Korean conflict veterans or disabled veterans. See W. Va. Code § 11-24-12, and Section 12 of these regulations.

Section 16.04(a)

16.04. Amendment of Declaration.

(a) In general. -- An amended or revised declaration may be filed at any time during the taxable year if the corporation subsequently determines that its West Virginia taxable income, or its allowable credits, will materially change the amount of estimated tax reported in its previous declaration.

(b) Rules for Filing Amended Declaration.

(1) An amended declaration shall be made on Form 112-ES that is clearly marked "AMENDED." See Section 16.03(b) for procedure to be followed if the prescribed form is not available.

(2) No amended declaration may be filed until after the date on which the declaration was due or the date the declaration was filed, whichever is later.

(3) Only one amended declaration may be filed during any interval between installment dates.

(4) If an amended declaration is filed, the remaining installments not yet due, shall be ratably increased or decreased to reflect any adjustment in the amount of estimated tax by reason of such amendment.

Section 16.04(b)

(5) If the original estimate is too low, subsequent increased payments will not bar application of interest and additions to tax with respect to any previous installment or installments that were too low. See W. Va. Code § 11-24-17a; and Section 17a of these regulations.

(6) No claim for refund of estimated tax may be filed until the day the annual return for the taxable year is filed showing an overpayment of estimated tax.

Section 16.05(a)

16.05. Time for Filing Declaration.

(a) In General. -- A declaration of estimated tax required by W. Va. Code § 11-24-16(a) and Subsection 16.01 of these regulations, shall be filed as follows:

If the requirements of § 11-24-16(a) are first met	The declaration shall be filed on or before
before the 1st day of the 4th month of the taxable year.....	the 15th day of the 4th month of the taxable year
after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year.....	the 15th day of the 6th month of the taxable year
after the last day of the 5th month and before the 1st day of the 9th month of the taxable year.....	the 15th day of the 9th month of the taxable year
after the last day of the 8th month and before the 1st day of the 12th month of the taxable year.....	the 15th day of the 12th month of the taxable year

See W. Va. Code § 11-24-16(e).

(b) Exceptions. -- A declaration of estimated tax need not be filed for the taxable year if:

- (1) The amount of tax due with the annual return for the taxable year will be six hundred dollars (\$600) or less. See Section 16.06 of these regulations.
- (2) The annual return is filed on or before the fifteenth day of the second month of the

Section 16.05(b)

succeeding taxable year, and the declaration was not required by law or these regulations to have been filed during the taxable year. See Section 16.07 of these regulations.

Section 16.06(a)

16.06. Automatic Extension of Time for Filing Declaration of Estimated Tax of \$600 or Less.

(a) In General. -- If a corporation determines that its estimated tax, as defined in Section 16.02, for the taxable year is six hundred dollars (\$600) or less, it is only required to file an annual return for the taxable year and pay the amount of tax shown thereon to be due, on or before the fifteenth day of the third month of the succeeding tax year (March 15th for calendar year taxpayers). For this purpose, all eligible taxpayers are granted an automatic extension of time from the date when the declaration of estimated tax and installment payments would otherwise be lawfully due until the due date of their annual return for that taxable year (determined without regard to any extension of time for filing the annual return.)

(b) Interest and Additions to Tax.

(1) If the amount remitted with the annual return is six hundred dollars (\$600) or less, or if one of the safety zones applies (See Section 17a.05) no interest or additions will begin to accrue on the amount due until March 16th of the succeeding tax year (16th day of the 3rd month of the succeeding tax year).

Section 16.06(b)

(2) If the amount remitted with the annual return exceeds six hundred dollars (\$600) and if none of the safety zones apply (See Section 17a.), interest and additions shall be imposed and shall be calculated from the date when the declaration of estimated tax and the first installment payment should have been remitted. Interest and additions to tax shall similarly be applied to any subsequent installment payments that should have been remitted, calculated from the date such installments should have been paid.

(3) See Sections 17a.01, 17a.03, 17a.04 and 17a.05 for application and computation of interest and additions to tax and application of safety zones.

Section 16.07(a)

16.07. Return as Declaration or Amendment.

(a) Return as Declaration. -- If no declaration of estimated tax was required by W. Va. Code § 11-24-16(d) to have been 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, the corporation may elect to file its annual return for the taxable year for which the declaration is required, on or before the fifteenth day of the second month of the succeeding taxable year, and pay in full the amount of tax shown on the return to be due, in lieu of filing its declaration on or before the fifteenth day of the preceding month.

(b) Return as Amended Declaration. -- 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 a declaration was filed, and pays in full the amount of tax shown on the return to be due, such return shall be considered an amendment to the declaration permitted by W. Va. Code § 11-24-16(d) and Section 16.04 of these regulations, if the tax shown on the return is greater than the estimated tax shown in a declaration previously made. See W. Va. Code § 11-24-16(g)

Section 16.08(a)

16.08. Short Taxable Year.

(a) Requirement of Declaration. -- A separate declaration of estimated tax is required where a corporation is required to file a federal income tax return for a period of less than twelve (12) months, and its West Virginia taxable income for the short taxable year can be reasonably expected to exceed ten thousand dollars (\$10,000). See W. Va. Code §§ 11-24-8(a) and 11-24-16(a). However, no declaration is required if the short taxable year is--

- (1) A period of less than four (4) months, or
- (2) A period of four (4) or more months but less than twelve (12) months, and the requirements of W. Va. Code § 11-24-16(a) are not met before the first day of the last month in the short taxable year.
- (3) The amount of tax remitted with the annual return for the short tax year will be six hundred dollars (\$600) or less.

(b) Time for Filing Declaration of Estimated Tax in Case of a Short Taxable Year.

- (1) In the case of a short taxable year of four (4) or more months but less than twelve (12) months, the declaration of estimated tax must be filed on or before the applicable date

Section 16.08(b)

specified in Section 16.05 of these regulations.

(2) Examples. Application of the provisions of this section is illustrated by the following examples:

Example No. 1. A corporation that files on a calendar year basis changes to a fiscal year beginning September 1, 1983. It will have a short taxable year beginning January 1, 1983, and ending August 31, 1983. If the requirements of W. Va. § 11-24-16(a) are met before April 1, 1983 (the 1st day of the 4th month), the declaration of estimated tax must be filed on or before April 15, 1983 (the 15th day of the 4th month).

Example No. 2. If, in the above example, the corporation first meets the requirements of W. Va. Code § 11-24-16(a) during July 1983, then the requirements of W. Va. Code § 11-24-16(a) were met before the first day of the last month of the short taxable year, and a declaration of estimated tax is required to be filed on or before August 15, 1983, for the short taxable year.

Section 16.08(b)

Example No. 3. If, however, in the above example, the corporation does not meet the requirements of W. Va. Code § 11-24-16(a) until August 1, 1983, then the requirements of W. Va. Code § 11-24-16(a) were not met before the first day of the last month of the short taxable year, and no declaration of estimated tax is required to be filed for the short taxable year.

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

Section 17.01

~~Section 17. Installment Payments of Estimated Tax.~~

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

[NOTE: This section is completely rewritten. Existing language would be deleted, as evidenced above. New language appears hereinafter but is not underlined.]

Section 17.01

Section 17. Payments of Estimated Tax.

- 17.01. Amount Required To Be Paid
- 17.02. Time for Payment of Estimated Tax;  
Calendar Year Taxpayers.
- 17.03. Time for Payment of Estimated Tax;  
Fiscal Year Taxpayers.
- 17.04. Installment Payments After Amendment  
of Declarations.
- 17.05. Short Taxable Years.
- 17.06. Credits Against Installment Payments.
- 17.07. Installment Paid in Advance
- 17.08. Application of Installment Payments.
- 17.09. Special Rule for 1983 Taxes.

17.01. Amount Required To Be Paid. -- Every corporation required to file a declaration of estimated tax under W. Va. Code § 11-24-16 shall pay the full amount of its estimated tax as provided in subsection 17.02 in the case of calendar year taxpayers, and subsection 17.03 in the case of fiscal year taxpayers.

Section 17.02(a)

17.02. Time for Payment of Estimated Tax; Calendar Year Taxpayers.

(a) April 15th. -- A calendar year taxpayer that files its declaration of estimated tax on or before April 15th of the taxable year, shall pay one hundred percent (100%) of its estimated tax in four (4) equal installments, one at the time of filing the declaration. The remaining installment payments are due on or before June 15th, September 15th, and December 15th, respectively, of the taxable year.

(b) June 15th. -- A calendar year taxpayer that files its declaration of estimated tax after April 15th but on or before June 15th, and was not required by W. Va. Code § 11-24-16(e) to file its declaration of estimated tax on or before April 15th of the taxable year, shall pay one hundred percent (100%) of its estimated tax in three (3) equal installments, one at the time of filing the declaration. The remaining installment payments are due on or before September 15th and December 15th, respectively, of the taxable year.

(c) September 15th. -- A calendar year taxpayer that files its declaration of estimated tax after June 15th but on or before September 15th, and was not required by W. Va. Code § 11-24-16(e) to file its declaration of estimated tax on or before April 15th or on or before June 15th of the

Section 17.02(d)

able year, shall pay one hundred percent (100%) of its estimated tax in two (2) equal installments, one at the time of filing the declaration. The remaining installment payment is due on or before December 15th of the taxable year.

(d) After September 15th. -- A calendar year taxpayer that files its declaration of estimated tax after September 15th of the taxable year, and was not required by W. Va. Code § 11-24-16(e), to file its declaration of estimated tax on or before April 15th, June 15th, or September 15th, of the taxable year, shall pay one hundred percent (100%) of its estimated tax at the time of filing its declaration of estimated tax for the taxable year.

(e) Late Filing of Declaration of Estimated Tax. -- If the declaration of estimated tax is filed after the time prescribed by W. Va. Code § 11-24-16(e) for its filing, or after the expiration of any extension of time for filing granted by the Tax Commissioner, the remaining installment payments are due on or before June 15th, September 15th and December 15th, respectively.

Section 17.03(a)

17.03. Time for Payment of Estimated Tax; Fiscal Year Taxpayers.

(a) 15th Day of Fourth Month. -- A fiscal year taxpayer that files its declaration of estimated tax on or before the 15th of the fourth month of the taxable year, shall pay one hundred percent (100%) of its estimated tax in four (4) equal installments, one at the time of filing the declaration. The remaining installment payments are due on or before the 15th of the sixth month, the 15th of the ninth month, and the 15th of the twelfth month, respectively, of the taxable year.

(b) 15th Day of the Sixth Month. -- A fiscal year taxpayer that files its declaration of estimated tax after the 15th of the fourth month but on or before the 15th of the sixth month, and was not required by W. Va. Code § 11-24-16(e) to file its declaration of estimated tax on or before the 15th of the fourth month of the taxable year, shall pay one hundred percent (100%) of its estimated tax in three (3) equal installments, one at the time of filing the declaration. The remaining installment payments are due on or before the 15th of the ninth month, and the 15th of the twelfth month, respectively, of the taxable year.

(c) 15th Day of Ninth Month. -- A fiscal year taxpayer that files its declaration of estimated tax after the 15th

Section 17.03(d)

of the sixth month, but on or before the 15th of the ninth month, and was not required by W. Va. Code § 11-24-16(e) to file its declaration of estimated tax on or before the 15th of the fourth month, or on or before the 15th of the sixth month of the taxable year, shall pay one hundred percent (100%) of its estimated tax in two (2) equal installments, one at the time of filing the declaration. The remaining installment payment is due on or before the 15th of the twelfth month of the taxable year.

(d) After 15th Day of the Ninth Month. -- A fiscal year taxpayer that files its declaration of estimated tax after the 15th of the ninth month of the taxable year, and was not required by W. Va. Code § 11-24-16(e) to file its declaration of estimated tax on or before the 15th of the fourth month, the 15th of the sixth month, or the 15th of the ninth month of the taxable year, shall pay one hundred percent (100%) of its estimated tax at the time of filing its declaration of estimated tax for the taxable year.

(e) Late Filing of Declaration of Estimated Tax. -- If the declaration of estimated tax is filed after the time prescribed by W. Va. Code § 11-24-16(e) for its filing, or after the expiration of any extension of time for filing granted by the Tax Commissioner, the remaining installment payments are due on or before the 15th of the sixth month,

Section 17.03(e)

the 15th of the ninth month and the 15th of the twelfth month, respectively.

Section 17.04(a)

17.04. Installment Payments After Amendment of Decla-  
ration.

(a) In General. -- If a corporation amends its declaration of estimated tax, the remaining installment payments, if any, must be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the amount of estimated tax because of the amendment.

(b) When Amendment Made After September 15th. -- If any amendment is made after the fifteenth day of September (15th day of the 9th month of the fiscal year) of the taxable year, any increase in estimated tax by reason of the amendment must be paid at the time of filing the amended declaration of estimated tax even though the amount of the last installment payment, is not yet due. The amount of the last installment payment, determined prior to the amendment, remains due on or before the 15th day of December (15th day of the 12th month of the fiscal year).

Section 17.05(a)

17.05. Short Taxable Years.

(a) In General.

(1) In the case of a short taxable year for which a declaration of estimated tax is required to be filed (see subsection 16.08 of these regulations), the amount and time for payment of each installment of estimated tax is determined by subsection 17.02 or 17.03 of these regulations.

(2) Examples. -- The application of the provisions of paragraph (1), above, is illustrated by the following examples:

Example No. 1. -- A corporation that files on a calendar basis, changes to a fiscal year beginning September 1, 1983, and ending August 31, 1984, and is required to file a declaration of estimated tax on or before April 15, 1983, for the short taxable year January 1, 1983, to August 31, 1983. The corporation must make two 25% installment payments of estimated tax, the first on or before April 15, 1983, and the second on or before June 15, 1983, and must pay 50% (25% for the 3rd installment plus 25% for the 4th installment) of the estimated tax on or before August 15, 1983 (the 15th day of the

Section 17.05(a)

1983 (the 15th day of the last month of the short taxable year), as the last installment.

Example No. 2. -- If in the example above, the corporation does not meet the requirements of W. Va. Code § 11-24-16(a) until June 15, 1983, the declaration is due on or before August 15, 1983 (the 15th day of the last month of the short taxable year).

(3) Late Filing of Declaration of Estimated Tax. --

Where a declaration of estimated tax for a short taxable year is filed after the date prescribed in subsection 16.05 of these regulations (determined without regard to any extension of time for filing the declaration under subsection 18.06 of these regulations), the provisions of subsections 17.02 or 17.03 of these regulations, must be applied in determining the time for payment of each installment. However, where any installment or installments would become due after the close of the short taxable year, such installment or installments shall be paid on or before the 15th day of the last month of the short taxable year.

Section 17.05(a)

(4) Amended Declarations. -- Where an amended declaration of estimated tax for a short taxable year is filed in accordance with subsection 16.04 of these regulations, the amount of any increase or decrease in estimated tax must be allocated equally to the remaining installment payments. However, where any installment or installments would become due after the close of the short taxable year, such installment or installments shall be paid on or before the 15th day of the last month of the short taxable year.

17.06. Credits Against Installment Payments

(a) General. A corporation may, in lieu of receiving a refund of income taxes paid for the preceeding taxable year, elect to apply the overpayment towards its estimated tax due for the succeeding taxable year. This overpayment credit may be deducted in full from the first installment payment of estimated tax for the succeeding taxable year if the annual return for the preceeding taxable year is filed on or before the due date of the declaration of estimated tax for the succeeding taxable year. Any excess credit remaining may be deducted in full from the next succeeding installment payment.

(b) Underpayment of prior year's tax. -

(1) The Tax Commissioner will not offset an overpayment shown on an annual return that was applied at the taxpayer's election to estimated taxes for the succeeding tax year, against any additional tax subsequently determined to be owed for the taxable year of the overpayment.

(2) If a corporation claims a credit when it actually made no overpayment of the prior year's tax, the result will be a deficiency for the prior

Section 17.06

year. The effect is the same as if the claimed overpayment had been refunded when it was credited against the estimated tax due for the succeeding taxable year.

(3) Interest is due on any deficiency determined for the overpayment year once the overpayment has been credited against the estimated tax due for the succeeding taxable year notwithstanding the fact that the annual return for the succeeding taxable year is not yet due when the deficiency for the prior year is asserted by the Tax Commissioner.

(c) Examples

(1) Taxpayer's annual corporation net income tax return for 1983 was filed March 15, 1984 showing an overpayment of \$5,000 for that year, and electing to apply the overpayment against 1984 installment payments of estimated tax. Upon audit of the 1983 annual return, the Tax Commissioner determines that additional tax of \$3,000 is owed for 1983. Interest and additions to tax begin to

Section 17.06

accrue on the deficiency on the day after the day the annual return was due. Additionally, interest and additions to tax may be owed for underpayment of estimated tax during the preceding calendar year.

(2) Taxpayer obtains a six-month extension of time for filing its annual return for the 1983 tax year. When it is filed, it shows an overpayment of tax in the amount of \$2,000. Taxpayer may, in lieu of receiving a refund of this amount, elect to apply it towards installment payments of estimated tax due for the succeeding taxable year on or after the date the annual return is filed for the preceding tax year.

Section 17.07

17.07. Installments Paid In Advance. A corporation may elect to pay any installment of its estimated tax prior to the date prescribed by law for its payment.

Section 17.08

17.08. Application of Installment Payments. The payment of any installment of estimated tax shall be considered to be payment on account of the corporation net income tax for the taxable year for which the declaration is made. The aggregate amount of the payments of estimated tax should be entered upon the annual corporation net income tax return as payments to be applied against the tax shown to be due for that taxable year.

Section 17.09

17.09. Special Rule for 1983 Taxes. Corporations were given an automatic extension of time from April 15, 1983 until September 15, 1983, in which to file their declarations or amended declarations for the 1983 calendar year. Upon filing, one-half of the estimated tax liability is due and payable. The remaining one-half was due in equal installments on September 15, 1983 and December 15, 1983, respectively.

Section 17a.01

Section 17a. Interest and Additions to Tax.

- 17a.01. Applicability of Interest and Additions to Tax.
- 17a.02. How Underpayment of Estimated Tax Is Measured.
- 17a.03. Computing Interest
- 17a.04. Computing Additions to Tax.
- 17a.05 "Safety Zones" Bar Imposition of Interest and Additions to Tax for Underpayment of Estimated Tax.

[NOTE: This Section is new. Therefore strike-throughs and underscoring have been omitted.]

17a.01. Applicability. The interest and additions to tax provisions of W. Va. Code §§ 11-10-17 and 11-10-18 are specifically made applicable to underpayments of estimated corporation net income tax by the provisions of W. Va. Code § 11-24-17a. They will be applicable regardless of whether there is a failure to pay the entire amount of any installment of estimated tax on or before its due date (See W. Va. Code § 11-24-17), or the amount of estimated tax is under estimated by more than twenty percent (20%). Two exceptions to this rule are as follows:

- (1) Where the amount of tax due with the annual return is six hundred dollars (\$600) or less; and,
- (2) Where the taxpayer qualifies under one of the safety zones described in Section 17a.05 of the regulations.

Section 17a.02(a)

17a.02. How Underpayment of Estimated Tax Is Measured.

(a) In General. -- To see whether a corporation's estimated tax payments for the taxable year equal at least eighty percent (80%) of its actual liability for the primary tax and surtax imposed by W. Va. Code § 11-24-4, the following procedure shall be applied:

(1) Determine the sum of the corporation's primary income tax shown on its annual return for the taxable year (as reduced by the amount of allowable credits) plus its surtax for the taxable year. If no annual return was filed, take one hundred percent (100%) of the total tax determined to be due for the taxable year.

(2) Take eighty percent (80%) of the above amount.

(3) Divide the amount from step (2), above, by the number of installments required for the year. Generally, this will require dividing by four, but the number of installments may be three, two or one. See Section 17.02 or 17.03 of these regulations.

(4) For each installment as computed in step (3), above, find the excess, if any, over the amount actually paid or credited toward that installment

Section 17a.02(b)

payment. (Add in any overpayments available from a previous installment.) If there is no excess, no further computation is necessary for that installment.

(b) Any excess computed in step (4), above, for any installment is the amount of underpayment of that installment. If the actual payment made for the underpaid installment does not meet at least one of the available safety zone tests, applicable additions to tax must be paid in addition to interest on the amount of that underpayment of estimated tax. See:

- (1) Section 17a.03 for computing interest.
- (2) Section 17a.04 for computing additions to tax.
- (3) Section 17a.05 for safety zones.

17a.03. Computing Interest.

(a) In General. -- Nonwaivable simple interest calculated at the rate of eight percent (8%) per year (2/3% per month) shall be imposed for the number of days from the due date of the installment payment to the earlier of:

- (1) the fifteenth day of the third month after the close of the taxable year, or
- (2) the date on which the tax or the underpayment of the installment is paid. An overpayment of a subsequent installment stops the running of the interest to the extent that it wipes out the previous underpayment. For this purpose, the fifteenth day of the third month after the end of the taxable year is taken as the day to which the interest is computed even through it may fall on a Saturday, Sunday or legal holiday.

(b) The due date of an installment is determined without regard to any extension of time for paying the estimate. W. Va. Code § 11-10-17(a). If the amount remitted with the annual return for the taxable year is six hundred dollars (\$600) or less, no declaration of estimated tax is required for the taxable year and the interest provisions do not apply prior to the due date of the annual return. See Section 17.07.

Section 17a.03(c)

(c) A payment that is not in excess of the amount due for that installment period applies to that period, and cannot be used to credit an earlier period.

For example, a calendar year taxpayer receives most of its income during the last six months of the taxable year. It makes only a timely fourth quarter installment payment on December 15th, equal to 25% of 80% of its ultimate tax liability for the year. The corporation will not be deemed to have underpaid the installment due for the fourth quarter. However, interest and additions will apply to the other installments.

(d) If an installment payment exceeds the amount due for that installment, the excess is applied to the amount delinquent from any earlier installment period. The excess is applied first to satisfy the delinquent tax for the earliest installment period and then to interest and additions to tax for that deficiency. Any excess is applied to the next earliest installment period in the same fashion. (Any excess remaining after all delinquent installments plus interest and additions to tax are satisfied, is credited to subsequent installments). If the next installment payment also exceeds the amount due, the excess is similarly applied, first to tax and then to interest and additions to tax. The oldest delinquency is satisfied first.

Section 17a.03(e)

(e) A prior year's overpayment of tax can be credited against the current year's estimated tax under the following rules:

- (1) If the overpayment is determined on an annual return for the preceding taxable year filed subsequent to the filing of the declaration of estimated tax for the current taxable year, the overpayment may not be taken as a credit against the first installment payment for the current taxable year. It may only be credited against an installment of estimated tax which is due on or after the annual return is filed and the taxpayer elects to apply the overpayment to payment of estimated tax for the current tax year.
- (2) If the amount of the overpayment credit exceeds eighty percent (80%) of the installment payment due on or after the overpayment was made, then it can be applied as a payment of any previous underpayment of estimated tax.
- (3) Relating to credit adjustment on annual return applied against estimated tax for subsequent years, See Section 17.06, which is new.

Section 17a.03(f)

(f) Application of Safety Zone. -- If one of the safety zones in Section 17a.05 applies to the underpayment of estimated tax, no interest will begin to accrue on the amount of the underpayment until the day after the day the annual return should have been filed (determined without regard to any extension of time) and the remaining amount of tax due paid.

17a.04. Computing Additions to Tax.

(a) In General. -- In addition to interest calculated and applied so provided in Section 17a.03 of these regulations, additions to tax shall be imposed as provided in this subsection.

(b) Additions to Tax. -- The additions to tax provisions of W. Va. Code § 11-10-18 apply to any underpayment of estimated corporation net income tax, regardless of whether such underpayment is because of a failure to pay the entire installment payment when due (determined with regard to any authorized extension of time); or because of underestimation, by more than twenty percent (20%), of the corporation net income tax (both primary and surtax) due for the taxable year. W. Va. Code § 11-24-17a.

(1) Failure to Timely File Declaration of Estimated Tax. -- In the case of failure to make and file a declaration of estimated tax (or amended declaration) on or before the date prescribed by law, there shall be added to the amount of estimated tax shown on the declaration 5% of the amount thereof if the failure is for more than 30 days plus an additional 5% for each month or fraction thereof during which there is a failure to

Section 17a.04(b)

file the declaration. This addition to tax may not exceed 25% of the estimated tax liability. It is waivable by the Tax Commissioner where the taxpayer shows that its failure to timely file the declaration is due to reasonable cause and not due to willful neglect. In the case of an amended declaration, this penalty applies only to the net amount of the additional estimated tax. The following examples illustrate application of this penalty.

Example (1). -- X Corporation reports on a calendar year basis. It failed to file its declaration of 1984 estimated tax that was due April 15, 1984. If that return had been filed, it would have showed estimated tax of \$20,000. A penalty of 25% is imposed (\$5,000) for the failure to timely file the declaration of estimated tax. This penalty is waivable if the taxpayer presents cogent evidence that its failure to timely file the declaration was due to reasonable cause and not due to willful neglect.

Example (2). -- X Corporation reports on a calendar year basis. It timely obtains from

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the Tax Commissioner an extension of time for filing its declaration of 1984 estimated tax from April 15, 1984 to June 15, 1984. X does not file its declaration until July 20, 1984. The estimated tax shown on the declaration is \$20,000. A penalty of 10% is imposed for failure to file the declaration on June 15, 1984 (5% because the failure was for more than one month plus 5% for the succeeding month or fraction thereof during which the failure continued). This penalty is waivable if the taxpayer presents cogent evidence that its failure to timely file the declaration (determined with regard to any authorized extension of time) was due to reasonable cause and not due to willful neglect.

Example (3). -- X Corporation reports on a calendar year basis. It timely files its declaration of estimated 1984 tax on April 15, 1984, and remits 25% of the estimated tax. On August 20, 1984, X Corporation accepts an unanticipated offer from a purchaser resulting in the sale of some capital assets. X's declaration showed estimated 1984

Section 17a.04(b)

tax of \$20,000. Capital gain from the sale results in additional taxes of \$10,000. X was required to file an amended declaration of 1984 estimated tax on or before September 15, 1984, which it did not do. X files its 1984 annual return on March 15, 1985. A penalty equal to 25% of the additional tax that should have been shown on the amended declaration is imposed for failure to file the amended declaration. Because taxpayer's actual 1984 tax was \$30,000 and its declaration showed \$20,000 of estimated tax the penalty assessed will be 25% of \$4,000 or \$1,000. The penalty computation is  $(\$30,000 \times 80\% = \$24,000 - \$20,000 = 4,000 \times 25\% = \$1,000)$ .

(2) Failure to Timely Pay an Installment of Estimated Tax. -- In the case of failure to pay the entire amount of any installment payment of estimated tax, on or before its due date, there shall be added to the amount due 0.5% thereof if the failure is for one month or less plus an additional 0.5% for each month or fraction thereof during which there was a failure to pay the installment or any part of the installment then due.

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This addition to tax may not exceed 25% of the installment payment that is delinquent. This addition to tax is waivable by the Tax Commissioner where the taxpayer shows that its failure to timely pay is due to reasonable cause and not due to willful neglect.

(3) Application of Paragraph (1) and (2). -- In computing additions to tax, paragraph (1) applies to any failure to file the declaration of estimated tax. Paragraph (2) applies where:

(A) The declaration of estimated tax was timely filed but the taxpayer failed to remit, in whole or in part, the amount of the installment payment which was due on the date the declaration was required to be filed, determined without regard to any extension of time for filing the declaration unless an extension of time for paying the installment was also granted.

(B) Any subsequent installment payment is not paid on or before its due date. The due date of each installment payment is a separate event.

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(C) The taxpayer receives an extension of time to file its declaration of estimated tax, but does not obtain a concomitant extension of time for paying the first installment payment and any subsequent installment payment that becomes due during the extension period granted for filing the declaration.

(4) Negligence or Intentional Disregard of Rules and Regulations. -- In the case of any underestimating of estimated tax, except as provided in subsection 17a.05(d), which is due to negligence or intentional disregard of rules and regulations, (but without intent to defraud), there shall be added to the amount of tax underestimated (determined by multiplying the actual tax liability for the taxable year by 80% and dividing by the number of installment payments due for the taxable year) 5% thereof for each month of the deficiency up to 25% of the deficiency until it is paid.

(c) Application of Safety Zone. If one of the safety zones in Section 17a.05 applies to the underpayment of estimated tax, no interest will begin to accrue on the amount of the underpayment until the day after the day the annual return should have been filed and the remaining amount of the tax due paid (determined with regard to any extension of time for payment).

17a.05. "Safety Zones" Bar Imposition of Interest and Additions to Tax for Underpayment of Estimated Tax.

(a) In General. -- Interest and additions to tax will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment (determined with regard to any authorized extension of time for payment) the total amount of all payments of estimated tax at all times equals or exceeds the installment payment(s) that would have been due if the estimated tax for the taxable year equaled (or exceeded) at least eighty percent (80%) of the tax liability for the taxable year determined after application of allowable credits except the credit for installment payment(s) of estimated tax; or the total tax due for the taxable year is six hundred dollars (\$600) or less.

(b) Safety Zones. Additionally, interest and additions to tax will not be imposed for any underpayment of any installment of estimated tax if, on or before the due date of each installment payment, one-fourth or more of the least amount of estimated tax due under the following "Safety Zones," if applicable to the taxpayer, is remitted to the Tax Commissioner.

Section 17a.05(b)

(1) Safety Zone No. 1 . -- The amount of "tax shown" on the previous year's West Virginia corporate net income tax return, if such preceding year began after December 31, 1982, and was a taxable year of twelve (12) months. Safety zone no. 1 avoids interest and additions to tax if the total payments of estimated tax made by the installment date are at least equal to the amount which would have been required on that installment date if the estimated tax was the amount of "tax shown" on the previous year's West Virginia corporation net income tax return. In applying safety zone no. 1 the following rules apply:

(A) A corporation that did not file a West Virginia corporation net income tax return for the preceding year cannot use safety zone no. 1.

(B) A corporation that had zero West Virginia taxable income for the preceding taxable year, cannot use Safety Zone No. 1.

(C) An affiliated group electing to file a West Virginia consolidated return for the succeeding taxable year, that did not file a

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consolidated West Virginia corporation net income tax return for the preceding tax year cannot use safety zone no. 1.

(D) Safety zone no. 1 cannot be used when the preceding tax year was a tax year that began prior to January 1, 1983.

(E) The applicable tax credits are those allowed on the annual return for the preceding tax year.

(F) If the annual return for the preceding year is not filed on or before the due date of the declaration of estimated tax for the succeeding taxable year, the declaration of estimated tax for the succeeding taxable year cannot be based on last year's tax.

(2) Safety Zone No. 2. -- The amount of tax which would be due if computed based on the facts and law applicable to the West Virginia corporation net income tax return for the preceding year, but using the provisions of law applicable to the current year, or portion thereof, relating to primary tax rate, surtax, credits and limitations of credits. This safety zone avoids interest and additions to tax if the total payments of estimated tax already made by the installment date are

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at least equal to an amount which would have been required on that installment date if the estimated tax was a tax based on the facts shown on the previous year's return and the previous year's law, but using current year rates, (Primary and surtax) credits and limitations on credits.

(A) Nonrecurring items of income and deductions are not to be excluded.

(B) A corporation that did not file a West Virginia corporation net income tax return for the preceding tax year cannot use safety zone no. 2.

(C) An affiliated group electing to file a West Virginia consolidated return for the succeeding taxable year that did not file a consolidated West Virginia corporation net income tax return for the preceding tax year cannot use safety zone no. 2.

(3) Safety Zone No. 3. -- An amount equal to eighty percent (80%) of the tax determined by placing on an annual basis the taxable income for:

(A) the first three months of the taxable year, in the case of the installment required to be paid in the 4th month,

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(B) either the first three months or the first five months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the 6th month, and

(C) either the first six months or the first eight months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the 9th month, and

(D) either the first nine months or the first eleven months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the 12th month.

The taxable income so determined shall be placed on an annual basis by first multiplying it by twelve (12) and then dividing the resulting amount by the number of months in the taxable year for which the taxable income was so determined.

(c) Safety zone requirements must be satisfied on each installment date to avoid the imposition of interest and additions to tax on an underpayment of estimated tax as of

Section 17a.05(c)

the installment date. For purposes of paragraphs (a) and (b), it is presumed that a taxpayer's West Virginia taxable income is received in equal installments throughout the taxable year. The taxpayer bears the burden of proof to establish that the West Virginia taxable income was received during the taxable year in some other manner.

(d) If there has been an underpayment of any installment and the corporation believes that one of the safety zones discussed in subsection (b), above, applies, the corporation must attach to its annual return a statement fully explaining the applicability of the safety zone.

(e) Return for the Preceding Taxable Year. -- The term "return for the preceding taxable year" means the West Virginia corporation net income tax return required to be filed for the taxable year immediately preceding the succeeding taxable year by W. Va. Code § 11-24-13. If an amended return was filed for the preceding taxable year before the due date of the declaration of estimated tax for the succeeding taxable year (determined with regard to any extension of time for filing), then it constitutes the return for the preceding taxable year, if it is a reasonable estimate of the amount of tax due for the succeeding taxable year.

(f) "Facts Shown on the Preceding Year's Return." --

The facts shown on the preceding year's return include:

(1) A net operating loss deduction properly claimed on the preceding year's return.

(2) The facts shown on a West Virginia consolidated return for the preceding taxable year where a corporation no longer qualifies to file a consolidated return.

(3) Tax credits claimed on the return for the previous year even though allowable credits for the current taxable year are reasonably expected to be greater than or less than those allowed for the preceding year unless there has been a material change in the law effecting the amount of allowable credits or there is reasonably to be expected a change in the amount of allowable credits that will materially effect the amount of tax due for the current taxable year.

(g) Short Tax Years.

(1) The additions to tax for underpayment of estimated tax apply equally to short tax years where a declaration of estimated tax is required to be filed.

Section 17a.05(g)

(2) Safety zones

(A) In computing the safety zones for short taxable years, the estimated tax (whether based on that shown on the previous year's return or based on the previous year's facts) is reduced by multiplying the estimated tax for a full year by the percentage which the number of months in the short tax year bears to twelve.

(B) If the preceding taxable year was a short year, estimated tax for the current year (for purposes of safety zone 2) will be computed on an annual basis (income x 12 ÷ number of months in the short year). The tax will not be reduced because of the short year.

(C) If the tax rates for the year of underpayment have changed from the preceding year, the estimated tax must be computed using current rates.

(h) Safety zones for "52-53 week" years.

(1) If a taxpayer has a 52-53 week taxable year, the rules on 52-53 week years are applied in determining whether a taxable year was a year of

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12 months, and in determining the commencement of the 3-month period, or the 3- or 5-month period, or the 6- or 8-month period, or the 9- or 11-month period, whichever is applicable.

(2) If the end of any accounting period employed by the corporation (e.g., any of either thirteen 4-week periods, or four 13-week periods) doesn't correspond with the end of the applicable period used in annualizing, the taxable income is determined as follows:

(A) Determine the taxable income from the beginning of the taxable year to the close of the accounting period ending immediately before the end of the period used in annualizing.

(B) Determine the taxable income from the beginning of the taxable year to the close of the accounting period which straddles the end of the 6, 8, 9 or 11-month period.

(C) The difference in taxable income between that in paragraphs (A) and that in (B) is multiplied by the number of days from the close of the first accounting period to the end of the period used in annualizing and

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divided by the number of days between the termination dates of the two accounting periods.

(D) The amount computed under paragraph (C) is added to (or subtracted from) paragraph (A) to determine the taxable income for the period.

(3) Illustration: A 52-53 week year corporation has a taxable year beginning on December 26, 1981 and uses thirteen 4-week accounting periods in determining taxable income. Taxable income from December 26, 1981 to the close of the 4-week period ending on June 11, 1983 is \$200,000; to the end of the 4-week accounting period ending on July 9, 1982 is \$228,000. Taxable income for the 6-month period ending on June 30, 1982 is \$219,000 computed as follows:

Taxable income for period ending before June 30	\$200,000
Taxable income for period straddling June 30	<u>228,000</u>
Difference	<u>\$ 28,000</u>

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Days from end of first accounting period to June 30	19	
Days from end of first accounting period to end of second account- ing period	28	
19/28 of \$28,000		\$ 19,000
Taxable income for period ending June 11		<u>200,000</u>
Taxable income for period ending June 30		<u>\$219,000</u>

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Section 18. Extensions of Time.

- 18.01. General.
- 18.02. Extension of Time for Filing Returns.
- 18.03. Extension of Time for Filing Declaration of Estimated Tax
- 18.04. Extension of Time for Paying Tax.
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- 18.11. Furnishing of Security

[NOTE: This section is being amended. Strike throughs indicate language that would be deleted. Underscoring indicates language that would be added.]

18.01 In General. The Tax Commissioner ~~may~~ has discretionary authority under W. Va. § 11-24-18(a), to grant ana reasonable extension of time for the payment of tax or estimated tax (or any installment), or for the filing of any return, declaration, statement, or other document required to be filed ~~under~~ pursuant to the West Virginia Corporation Net Income Tax Act, ~~or for the payment of any tax~~ due on such terms and conditions as the Tax Commissioner may require. All requests for extensions of time shall be in writing and shall be filed with the Business Tax Division of the State Tax Department on or before the due date of the return or payment for which the request is made. Requests for extension of time for payment of tax must comply with Subsection 18.06.

Section 18.02(a)

18.02. Extension of Time for Filing Returns.

(a) In General. -- Except in extraordinary situations, an extension of time for filing any return, statement, or other document relating to the corporation net income tax which is required by Article 11-24, or these regulations will not be granted for more than six (6) months.

(b) Payment of Tax. -- An extension of time for filing a return does not operate to extend the time for payment of the tax or any part thereof, unless the document authorizing the extension specifically states that an extension of time for payment is also granted.

(c) Application for Extension. -- The application for an extension of time for filing the return must be filed with the Director of Business Tax Division and must contain a full recital of the causes for the delay. The application should be filed before the date the return is due. Failure to do so may indicate negligence and constitute sufficient cause for denial. Whenever possible, it should be filed sufficiently early to permit consideration of the matter and reply before the statutory due date of the return.

[NOTE: If extension of time for payment is requested, the application must comply with Section 18.07.]

~~18-02-~~ (d) Automatic Extension of Time. -- A taxpayer

Section 18.02(d)

~~who~~ has that received an extension of time in which to file its federal income tax return for the taxable year automatically receives a corresponding extension of time in which to file its West Virginia income tax return. A taxpayer upon ~~receiving~~ a federal extension must make application ~~for the West Virginia extension.~~ A copy of the letter granting the federal extension must be attached to the West Virginia annual return when it is filed. While an extension of time for filing its federal return automatically extends the time for filing the West Virginia return, it does not extend the time for payment of the balance of the West Virginia tax due.

Section 18.01(a)

18.03. West-Virginia-Extensions-of-Time. In rare cases, where an extension of time is not needed federally, but it is felt, by the taxpayer, that it is needed for West Virginia income tax purposes, a specific request should be made to the Business Tax Division. Generally, an extension of time to file a return on an original application will be limited to a period of time not in excess of six months. Longer periods of time will not be granted by the Tax Commissioner unless sufficient need for such extended period is clearly shown.

18.03. Extensions of Time for Filing Declaration of  
Estimated Tax.

(a) In General. -- The Tax Commissioner has discretionary authority under W. Va. Code § 11-24-18(a), to grant a reasonable extension of time for filing any declaration of estimated tax required to be filed pursuant to the provisions of W. Va. Code § 11-24-16, on such terms and conditions as he may require. An application for an extension of time for filing a declaration, or amended declaration, of estimated tax must:

- (1) be made in writing,
- (2) be addressed to the Director of Business Tax Division,
- (3) contain a full recital of the causes for the delay, and
- (4) be filed on or before the due date of the declaration of estimated tax.

(b) Interest and Additions to Tax Applicable. -- An extension of time granted to a corporation for filing a declaration of estimated tax does not automatically extend the time for paying the first installment of estimated tax for the same period, or any subsequent installments that become due during the extension period for filing the declaration.

Section 18.03(c)

(c) Special Rule for Period January 1-June 30, 1983 --  
A corporation required by W. Va. Code § 11-24-16, to file  
its declaration of estimated tax for the current taxable  
year, during the period beginning January 1, 1983 through  
June 30, 1983, received an automatic extension of time until  
September 15, 1983 to file an amended declaration of est-  
imated tax and pay additional estimated tax without either  
interest or additions to tax being imposed on that portion  
of the additional estimated tax attributable to the provi-  
sions of Committee Substitute for Senate Bill No. 310. With  
respect to that portion of any estimated tax that would  
have been due had Committee Substitute for Senate Bill No.  
310 not been enacted interest and additions to tax shall be  
imposed.

Section 18.04(a)

18.04. Extension of Time for Paying Tax.

(a) In General. -- The Tax Commissioner has discretionary authority under W. Va. Code § 11-24-18(a) and (b) to grant a reasonable extension of time for payment of tax, on such terms and conditions as the law and the Tax Commissioner may require.

(b) Payment of Tax. -- A taxpayer that is granted an extension of time for filing its annual return (whether such extension is automatically granted due to an extension of time to file its federal return or is a West Virginia extension) is not automatically granted a similar extension of time for paying its West Virginia corporation net income tax. If the taxpayer desires an extension of time for paying West Virginia tax, an application for extension of such time must be timely filed with the Director of Business Tax Division, as provided in Section 18.07 of these regulations.

Section 18.05(a)

18.05. Extension of Time for Paying Estimated Tax.

(a) In General. -- The Tax Commissioner has discretionary authority under W. Va. Code § 11-24-18(a) to grant a reasonable extension of time for payment of the amount of any installment of estimated tax, on such terms and conditions as the Tax Commissioner may require.

(b) No Automatic Extension of Time. -- A taxpayer that has received an extension of time in which to file its declaration of estimated tax for the taxable year, does not automatically receive a corresponding extension of time for making the installment payment that is due with that declaration of estimated tax. Where a concomitant extension of time for payment of estimated tax is granted, the taxpayer, upon filing the declaration of estimated tax on or before the last day of the extension period, shall remit the entire amount of any installment payments that otherwise have been due plus interest at the rate of eight percent (8%) per year (2/3% per month) calculated from the date the payment was originally due until the date the payment is made.

Example No. 1. -- A corporation that is a calendar year taxpayer receives an extension of time until June 15th to file its declaration of estimated tax for the taxable year. Since no extension of time was granted for paying the first installment of

Section 18.05(b)

estimated tax, it remains due April 15th. On June 15th the declaration is filed. The first and second installment payment must accompany the declaration of estimated tax when it is filed on June 15th. Additionally, the taxpayer must remit the interest due on the first installment for the period April 15th through June 15th plus 10% penalty for intentional disregard of rules and regulations of the Tax Commissioner.

Example No. 2. -- Same facts as above except that the estimated declaration is filed on June 10th. With the declaration is remitted the first installment plus the interest due for the period April 15th through June 10th. Additionally, 10% penalty shall be remitted for intentional disregard of rules and regulations of the Tax Commissioner.

Example No. 3. -- B Corporation is a calendar year taxpayer. It receives an extension of time until July 15th to file its declaration of estimated tax for the taxable year. It fails to timely remit its first two installment payments. On July 15th the declaration is filed. The first and second installment payments accompany the declaration

Section 18.05(b)

along with interest and 15% penalty for the period April 15th-July 15th in the case of the first installment and interest plus 5% penalty for the period June 15th-July 15th in the case of the second installment.

~~18-04-~~ 18.06 Extension of Time for Paying Amount

Determined as Deficiency.

(a) In General. -- An extension of time for filing the return automatically extends the time for payment of the tax. The Tax Commissioner may separately grant an extension of time for up to 18 months for the payment of the amount of tax determined as a deficiency, upon a written request by the taxpayer setting forth complete information as to the reasons for its inability to make payment of the tax due on its return in conformity with subsection 18.07. If the taxpayer feels it cannot make payment of the tax due within the prescribed period of extension, it may make a request for an additional extension to the Tax Commissioner. Such additional extension may not exceed 12 months and may be granted only if it is established to the satisfaction of the Tax Commissioner that exceptional circumstances exist and that to require payment within the time prescribed by the first extension would work an undue hardship on the corporation.

(b) Exception. -- No extension of time for payment of taxes will be granted if any part of the deficiency is due to an intentional disregard of rules and regulations or to fraud.

Section 18.06(c)

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

Section 18.07(a)

18.07. Application for Extension of Time for Payment.

(a) In General. -- A taxpayer desiring an extension of the time for payment of the tax shown or required to be shown on any return, or for the payment of any installment of estimated tax, or for the payment of any amount determined as a deficiency must submit a written request for such extension accompanied by evidence of the undue hardship that would result to the taxpayer if the extension was refused.

(b) Supporting Data Required. -- This written request must also be accompanied by (1) a statement of the assets and liabilities of the taxpayer, and (2) an itemized statement showing all receipts and disbursements for each of the three months immediately preceding the due date of the amount to which the request relates.

(c) Time for Filing Application. -- The written request, with the required supporting documents, must be filed with the Director of Business Tax Division, on or before the date prescribed for payment of the amount for which the extension of time is desired.

(d) Notification of Disposition of Applications. -- The written request will be examined and, within thirty (30) days, if possible, will be denied, granted or tentatively granted subject to certain conditions of which the taxpayer will be notified.

Section 18.07(e)

(e) Additional Extensions. -- If an additional extension is desired, the request therefor must be made in writing on or before the expiration of the period for which the prior extension is granted, accompanied by the statements and evidence required by subsection (a) and (b) of this section.

18.08. Undue Hardships Required for Extension.

(a) In General. -- An extension of time for payment of tax will be granted only upon a satisfactory showing that payment of the installment on the due date for which the extension is desired, will result in undue hardship. The extension will not be granted upon a general statement of hardship.

(b) "Undue Hardship" Defined. -- The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) Except in extremely unusual circumstances, an extension of time will not be granted to a taxpayer that can borrow the amount needed to make the payment from a bank or other financial organization. Accordingly, it is presumed that such borrowing is possible until the taxpayer affirmatively proves otherwise.

Section 18.09(a)

18.09. Period of Extension of Time.

(a) Period of Extension for Filing Returns, Declarations, Statements or Other Documents. -- An extension of time for filing any return, declaration, statement or other document, will generally not be granted for more than six months. In exceptional circumstances, an extension may be granted for a period not to exceed eighteen months.

(b) Period of Extension for Paying Tax, Estimated Tax or Deficiency. -- The extension of time granted for paying tax, or an installment of estimated tax, or the amount finally determined as a deficiency, will generally not exceed six months from the date fixed by law for its payment. Longer periods of time will not be granted unless the need for such an extended period is clearly shown by the taxpayer. In no event will the extension period or periods exceed eighteen months from the date fixed by law for payment except that under exceptional circumstances, the extension period or periods may aggregate thirty months.

Section 18.10

18.10. Claims in Bankruptcy or Receivership Proceedings. --

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

Section 18.11

18-05 18.11. Furnishing of Security. -- As a pre-requisite to granting an extension of time for payment of any tax or deficiency, the Tax Commissioner may require the corporation to furnish a bond or other security. Such bond or other security shall be in an amount not exceeding the amount for which the extension of time for payment is granted.

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