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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 463

(By Senator Craig)

PASSED April 10, 1993
In Effect 90 days from Passage

E N R O L L E D

Senate Bill No. 463

(BY SENATOR CRAIGO)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article nine, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section three, article twelve-b of said chapter; to amend and reenact section two, article thirteen-a of said chapter; to amend and reenact section five, article thirteen-c of said chapter; to further amend said article by adding thereto a new section, designated section fifteen; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-e; to amend and reenact sections two and nine, article fifteen of said chapter; to amend and reenact section twelve, article twenty-one of said chapter; to further amend said article by adding thereto a new section, designated section seventy-seven; to amend and reenact section nine, article twenty-three of said chapter; to amend and reenact sections six and thirteen, article twenty-four of said chapter; to amend article nine-a, chapter sixteen of said code by adding thereto a new section, designated section six; to amend and reenact sections four, five, six, six-a, twelve, fifteen,

sixteen and twenty-four, article twenty, chapter forty-seven of said code; to further amend said article by adding thereto two new sections, designated section twelve-a and twenty-eight-a; to amend and reenact sections seven, fifteen and twenty-two, article twenty-one of said chapter; and to further amend said chapter by adding thereto a new article, designated article twenty-three, all relating to revenue enhancements; providing expanded application of the crimes and penalties provisions relating to taxation; creating a criminal investigation section within the department of tax and revenue; providing for a reduction in the amount of authorized credits under the West Virginia capitol company act; by increasing the alternative minimum severance tax on coal by twenty-five cents; reduction in gross value for amount of federal energy tax; reducing the amount of super credit that may be taken in remaining years by adding three years to the remaining period; prohibiting the use of credits against sales and use tax liability; providing a one year suspension of the business investment and jobs expansion tax credit, also known as the super credit; requiring the commission to prepare a report recommending a replacement credit to the Legislature; eliminating the sales tax exemption for contractor engaging in repaving, repair or maintenance of bridges or highways; eliminating the indirect use sales tax exemption; and providing definitions of directly used and consumed; subjecting lottery winnings to personal income tax; subjecting lottery winnings of a certain amount to withholding; extending the due date of business franchise and corporate net income tax returns filed by certain tax exempt organizations; prohibiting any net operating loss from being carried back to any previous taxable year; requiring the amount of depreciation, amortization or cost depletion to be added back into the amount of taxable income for persons asserting specified credits; providing an age limitation on persons permitted to play bingo; changing the fee of super bingo license; limiting the payment of compensation to persons conducting bingo occasions; increasing the percentage of proceeds used for expenses; requiring specified records

and reports, requiring bingo operators to designate nonsmoking sections; changing the license fee for charitable raffles; allowing payment of certain expenses; requiring the filing of reports for charitable raffles; imposing a license fee on charitable raffle boards and games; requiring stamp to be affixed to charitable raffle boards and games; requiring wholesaler to pay fee; providing criminal penalties for failure to file a return; allowing forfeitures of vehicles and vessels upon illegal transportation of charitable raffle boards and games; authorizing promulgation of legislative rules; providing a severability clause; and providing for general procedure and administration.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article nine, chapter eleven of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-a; that section three, article twelve-b of said chapter be amended and reenacted; that section two, article thirteen-a of said chapter be amended and reenacted; that section five, article thirteen-c of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section fifteen; that article thirteen-d of said chapter be amended by adding thereto a new section, designated section three-e; that sections two and nine, article fifteen of said chapter be amended and reenacted; that sections twelve, article twenty-one of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seventy-seven; that section nine, article twenty-three of said chapter be amended and reenacted; that sections six and thirteen, article twenty-four of said chapter be amended and reenacted; that article nine-a, chapter sixteen of said code be amended by adding thereto a new section, designated section six; that sections four, five, six, six-a, twelve, fifteen, sixteen and twenty-four, article twenty, chapter forty-seven of said code be amended and reenacted; that said article be further amended by adding

thereto two new sections, designated sections twelve-a and twenty-eight-a; that sections seven, fifteen and twenty-two, article twenty-one of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article twenty-three, all to read as follows:

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be
4 increased pursuant to rule of the authority.

5 (b) The total credits authorized by the authority for
6 all companies may not exceed a total of ten million
7 dollars each fiscal year: *Provided*, That for the fiscal
8 year beginning the first day of July, one thousand
9 nine hundred ninety-two, the total credits authorized
10 by the authority for all companies under this section
11 or this article may not exceed a total of eight million
12 dollars each fiscal year: *Provided, however*, That for
13 the fiscal year beginning on the first day of July, one
14 thousand nine hundred ninety-three, and the fiscal
15 year one thousand nine hundred ninety-four, the total
16 credits authorized for all companies under this article
17 may not exceed a total of five million dollars: *Provided*
18 *further*, That for the fiscal year beginning the first day
19 of July, one thousand nine hundred ninety-three, and
20 for each fiscal year thereafter, the authority shall, for
21 the first one hundred eighty days of the fiscal year,
22 accept applications only from companies who certify in
23 their application that the investment of its entire
24 capital base will be in one or more small business
25 investment corporations organized under the small
26 business investment act: *And provided further*, That
27 the capital base of any such qualified company shall be
28 invested in accordance with the provisions of this
29 article. The authority shall allocate these credits to
30 qualified companies in the order that said companies
31 are qualified.

32 (c) Any investor, including an individual, partner-
33 ship or corporation who makes a capital investment in
34 a qualified West Virginia capital company, is entitled
35 to a tax credit equal to fifty percent of the investment,
36 except as otherwise provided in this section or in this
37 article. The credit allowed by this article shall be
38 taken after all other credits allowed by chapter eleven
39 of this code. It shall be taken against the same taxes
40 and in the same order as set forth in subsections (c)
41 through (i), section five, article thirteen-c of said
42 chapter. The credit for investments by a partnership
43 or by a corporation electing to be treated as a Sub-
44 chapter S corporation may be divided pursuant to
45 election of partners or shareholders.

46 (d) The tax credit allowed under this section is to be
47 credited against the taxpayer's tax liability for the
48 taxable year in which the investment in a qualified
49 West Virginia capital company is made. If the amount
50 of the tax credit exceeds the taxpayer's tax liability for
51 the taxable year, the amount of the credit which
52 exceeds the tax liability for the taxable year may be
53 carried to succeeding taxable years until used in full,
54 or until forfeited: *Provided, That:* (i) Tax credits may
55 not be carried forward beyond fifteen years; and (ii)
56 tax credits may not be carried back to prior taxable
57 years. Any tax credit remaining after the fifteenth
58 taxable year is forfeited.

59 (e) The tax credit provided for in this section is
60 available only to those taxpayers whose investment in
61 a qualified West Virginia capital company occurs after
62 the first day of July, one thousand nine hundred
63 eighty-six.

64 (f) The tax credit allowed under this section may not
65 be used against any liability the taxpayer may have
66 for interest, penalties or additions to tax.

67 (g) Notwithstanding any provision in this code to the
68 contrary, the tax commissioner shall publish in the
69 state register the name and address of every taxpayer,
70 and the amount, by category, of any credit asserted
71 under this article for any tax year beginning on or

72 after the first day of January, one thousand nine
73 hundred ninety-one. The categories by dollar amount
74 of credit received shall be as follows:

- 75 (1) More than \$1.00, but not more than \$50,000;
- 76 (2) More than \$50,000, but not more than \$100,000;
- 77 (3) More than \$100,000, but not more than \$250,000;
- 78 (4) More than \$250,000, but not more than \$500,000;
- 79 (5) More than \$500,000, but not more than \$1,000,000;
- 80 (6) More than \$1,000,000.

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

1 (a) The provisions of this article shall apply to the
2 following taxes imposed by this chapter: (1) The
3 inheritance and transfer taxes and estate taxes
4 imposed by article eleven of this chapter; (2) the
5 business franchise registration tax imposed by article
6 twelve of this chapter; (3) the annual tax on incomes
7 of certain carriers imposed by article twelve-a of this
8 chapter; (4) the business and occupation tax imposed
9 by article thirteen of this chapter; (5) the gasoline and
10 special fuels excise tax imposed by article fourteen of
11 this chapter; (6) the motor carrier road tax imposed by
12 article fourteen-a of this chapter; (7) the consumers
13 sales and service tax imposed by article fifteen of this
14 chapter; (8) the use tax imposed by article fifteen-a of
15 this chapter; (9) the cigarette tax imposed by article
16 seventeen of this chapter; (10) the soft drinks tax
17 imposed by article nineteen of this chapter; (11) the
18 personal income tax imposed by article twenty-one of
19 this chapter; and (12) the corporation net income tax
20 imposed by article twenty-four of this chapter.

21 (b) The provisions of this article shall also apply to
22 the West Virginia tax procedure and administration
23 act in article ten of this chapter, and to any other
24 articles of this chapter when such application is
25 expressly provided for by the Legislature.

26 (c) The provisions of this article shall also apply to
27 the charitable bingo fee imposed by sections six and
28 six-a, article twenty, chapter forty-seven of this code;
29 the charitable raffle fee imposed by section seven,
30 article twenty-one of said chapter; and the charitable
31 raffle boards and games fees imposed by section three,
32 article twenty-three of said chapter.

33 (d) Each and every provision of this article shall
34 apply to the articles of this chapter listed in subsec-
35 tions (a), (b) and (c) of this section, with like effect, as
36 if the provisions of this article were applicable only to
37 such tax and were set forth in extenso in such article.

**§11-9-2a. Criminal investigation section established; funding
of same.**

1 A criminal investigation section consisting of no
2 more than ten investigators plus necessary support
3 staff is hereby established within the state tax division
4 for the purpose of assuring compliance with laws,
5 rules and regulations pertaining to the taxes or credits
6 established by articles eleven, eleven-a, eleven-b,
7 twelve, twelve-a, twelve-b, thirteen, thirteen-a, thir-
8 teen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f,
9 thirteen-g, thirteen-h, fourteen, fourteen-a, fifteen,
10 fifteen-a, sixteen, seventeen, eighteen, nineteen,
11 twenty-three, twenty-four and twenty-six of this
12 chapter, and articles twenty, twenty-one and twenty-
13 three, chapter forty-seven of this code. Charitable
14 bingo fees imposed under sections six and six-a, article
15 twenty of said chapter; charitable raffle fees imposed
16 under section seven, article twenty-one of said chap-
17 ter; and charitable raffle boards and games fees
18 imposed under section three, article twenty-three of
19 said chapter shall be deposited in a special revenue
20 account established in the office of the treasurer and
21 shall be used to support compliance expenditures
22 relating to the establishment, maintenance and sup-
23 port of such criminal investigation section. At the close
24 of the fiscal year, any moneys in the special revenue
25 account in excess of twenty thousand dollars shall be
26 transferred to the general revenue fund.

27 Any employee of the criminal investigation section
28 so designated by the tax commissioner who shall have
29 a background in accounting and who shall be certified
30 as a law-enforcement officer pursuant to article
31 twenty-nine, chapter thirty of this code, or its equiv-
32 alent, shall have all the lawful powers delegated to
33 members of the department of public safety except the
34 power to carry firearms to enforce the provisions of
35 this article in any county or municipality of this state.
36 The commissioner shall establish such additional
37 standards as he or she deems applicable or necessary.
38 Any such employee shall, before entering upon the
39 discharge of his or her duties, execute a bond with
40 security in the sum of three thousand five hundred
41 dollars, payable to the state of West Virginia, condi-
42 tioned for the faithful performance of his or her
43 duties, as such, and such bond shall be approved as to
44 form by the attorney general, and the same shall be
45 filed with the secretary of state and preserved in his
46 or her office. The department of public safety, any
47 county sheriff, or deputy sheriff, or any municipal
48 police officer, upon request by the tax commissioner,
49 is hereby authorized to assist the tax commissioner in
50 enforcing the provisions of this article and the crimi-
51 nal penalty provisions of this article or any article of
52 this chapter administered under this article.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-3. Imposition of tax, credit.

1 (a) *Imposition of tax.* — Upon every person exercis-
2 ing the privilege of engaging within this state in
3 severing, extracting, reducing to possession or produc-
4 ing coal for sale, profit or commercial use there is
5 hereby imposed an annual minimum severance tax
6 equal to fifty cents per ton of coal produced by the
7 taxpayer for sale, profit or commercial use during the
8 taxable year: *Provided,* That for taxable years ending
9 after the thirty-first day of May, one thousand nine
10 hundred ninety-three, the minimum severance tax
11 imposed on coal produced by the taxpayer for sale,
12 profit or commercial use for such taxable year shall be
13 seventy-five cents, with such rate increase to apply

14 only to tons of coal produced after the thirty-first day
15 of May, one thousand nine hundred ninety-three.

16 (b) *Credit against article thirteen-a tax.* — A person
17 who pays the minimum severance tax imposed by this
18 article shall be allowed a credit against the severance
19 tax imposed on coal by section three, article thirteen-
20 a of this chapter, but not including the additional
21 severance tax on coal imposed by section six of said
22 article, equal to the liability of the taxpayer for the
23 taxable year for payment of the minimum severance
24 tax on coal imposed by this article: *Provided*, That the
25 amount of credit allowed by this section shall not
26 exceed the severance tax liability of the taxpayer for
27 the taxable year determined under paragraph (1),
28 subsection (b), section three of said article exclusive of
29 the additional tax on coal imposed by section six of
30 said article after application of all credits to which the
31 taxpayer may be entitled except any credit allowed
32 pursuant to chapter five-e of this code any credit for
33 installment payments of estimated tax paid pursuant
34 to section six of this article during the tax year and
35 any credit for overpayment of article thirteen-a tax.
36 Notwithstanding anything herein to the contrary, in
37 no event shall the credit allowed under chapter five-
38 e of this code be allowed as a credit against the
39 minimum severance tax imposed by this article.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-2. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) of this section shall have the meanings
4 ascribed to them by this section, unless a different
5 meaning is clearly required by either the context in
6 which the term is used or by specific definition.

7 (b) *Terms defined.* —

8 (1) “Coal” means and includes any material com-
9 posed predominantly of hydrocarbons in a solid state.

10 (2) “Delegate” in the phrase “or his or her dele-
11 gate”, when used in reference to the tax commission-

12 er, means any officer or employee of the state tax
13 department duly authorized by the tax commissioner
14 directly, or indirectly by one or more redelegations of
15 authority, to perform the function mentioned or
16 described in this article or regulations promulgated
17 thereunder.

18 (3) "Economic interest" for the purpose of this
19 article is synonymous with the economic interest
20 ownership required by Section 611 of the Internal
21 Revenue Code in effect on the thirty-first day of
22 December, one thousand nine hundred eighty-five,
23 entitling the taxpayer to a depletion deduction for
24 income tax purposes: *Provided*, That a person who
25 only receives an arm's length royalty shall not be
26 considered as having an economic interest.

27 (4) "Extraction of ores or minerals from the ground"
28 includes extraction by mine owners or operators of
29 ores or minerals from the waste or residue of prior
30 mining.

31 (5) "Fiduciary" means and includes, a guardian,
32 trustee, executor, administrator, receiver, conservator
33 or any person acting in any fiduciary capacity for any
34 person.

35 (6) "Gross value" in the case of natural resources
36 means the market value of the natural resource
37 product, in the immediate vicinity, where severed,
38 determined after application of post production pro-
39 cessing generally applied by the industry to obtain
40 commercially marketable or usable natural resource
41 products. For all natural resources, "gross value" is to
42 be reported as follows:

43 (A) For natural resources severed or processed (or
44 both severed and processed) and sold during a report-
45 ing period, gross value is the amount received or
46 receivable by the taxpayer.

47 (B) In a transaction involving related parties, gross
48 value shall not be less than the fair market value for
49 natural resources of similar grade and quality.

50 (C) In the absence of a sale, gross value shall be the

51 fair market value for natural resources of similar
52 grade and quality.

53 (D) If severed natural resources are purchased for
54 the purpose of processing and resale, the gross value is
55 the amount received or receivable during the report-
56 ing period reduced by the amount paid or payable to
57 the taxpayer actually severing the natural resource. If
58 natural resources are severed outside the state of West
59 Virginia and brought into the state of West Virginia by
60 the taxpayer for the purpose of processing and resale,
61 the gross value is the amount received or receivable
62 during the reporting period reduced by the fair
63 market value of the natural resources of similar grade
64 and quality and in the same condition immediately
65 preceding the processing of the natural resources in
66 this state.

67 (E) If severed natural resources are purchased for
68 the purpose of processing and consumption, the gross
69 value is the fair market value of processed natural
70 resources of similar grade and quality reduced by the
71 amount paid or payable to the taxpayer actually
72 severing the natural resource. If severed natural
73 resources are severed outside the state of West Virgin-
74 ia and brought into the state of West Virginia by the
75 taxpayer for the purpose of processing and consump-
76 tion, the gross value is the fair market value of
77 processing natural resources of similar grade and
78 quality reduced by the fair market value of the
79 natural resources of similar grade and quality and in
80 the same condition immediately preceding the process-
81 ing of the natural resources.

82 (F) In all instances, the gross value shall be reduced
83 by the amount of any federal energy tax imposed upon
84 the taxpayer after the first day of June, one thousand
85 nine hundred ninety-three, but shall not be reduced
86 by any state or federal taxes, royalties, sales commis-
87 sions or any other expense.

88 (G) For natural gas, gross value is the value of the
89 natural gas at the wellhead immediately preceding
90 transportation and transmission.

91 (H) For limestone or sandstone quarried or mined,
92 gross value is the value of such stone immediately
93 upon severance from the earth.

94 (7) "Mining" includes not merely the extraction of
95 ores or minerals from the ground but also those
96 treatment processes considered as mining under this
97 article and those treatment processes necessary or
98 incidental thereto.

99 (8) "Natural resource" means all forms of minerals
100 including, but not limited to, rock, stone, limestone,
101 coal, shale, gravel, sand, clay, natural gas, oil and
102 natural gas liquids which are contained in or on the
103 soils or waters of this state, and includes standing
104 timber.

105 (9) "Partnership" includes a syndicate, group, pool,
106 joint venture or other unincorporated organization,
107 through or by means of which natural resources are
108 severed, extracted, reduced to possession and produced
109 or prepared in this state for sale, profit or commercial
110 use. "Partner" includes a member of such a syndicate,
111 group, pool, joint venture or organization.

112 (10) "Person" or "company" are herein used inter-
113 changeably and include any individual, firm, partner-
114 ship, mining partnership, joint venture, association,
115 corporation, trust or any other group or combination
116 acting as a unit, and the plural as well as the singular
117 number, unless the intention to give a more limited
118 meaning is declared by the context.

119 (11) "Processed" or "processing" as applied to:

120 (A) Oil and natural gas shall not include any conver-
121 sion or refining process; and

122 (B) Limestone or sandstone quarried or mined shall
123 not include any treatment process or transportation
124 after the limestone or sandstone is severed from the
125 earth.

126 (12) "Related parties" means two or more persons,
127 organizations or businesses owned or controlled direct-
128 ly or indirectly by the same interests. Control exists if

129 a contract or lease, either written or oral, is entered
130 into whereby one party mines or processes natural
131 resources owned or held by another party and the
132 owner or lessor participates in the severing, processing
133 or marketing of the natural resources or receives any
134 value other than an arm's length passive royalty
135 interest. In the case of related parties, the tax commis-
136 sioner may apportion or allocate the receipts between
137 or among such persons, organizations or businesses if
138 he determines that such apportionment or allocation is
139 necessary to more clearly reflect gross value.

140 (13) "Sale" includes any transfer of the ownership or
141 title to property, whether for money or in exchange
142 for other property or services, or any combination
143 thereof.

144 (14) "Severing" or "severed" means the physical
145 removal of the natural resources from the earth or
146 waters of this state by any means: *Provided*, That
147 "severing" or "severed" shall not include the removal
148 of natural gas from underground storage facilities into
149 which the natural gas has been mechanically injected
150 following its initial removal from the earth: *Provided*,
151 *however*, That "severing" or "severed" oil and natural
152 gas shall not include any separation process of oil or
153 natural gas commonly employed to obtain marketable
154 natural resource products.

155 (15) "Stock" includes shares in an association, joint-
156 stock company or corporation.

157 (16) "Tax commissioner" means the tax commission-
158 er of the state of West Virginia, or his delegate.

159 (17) "Taxable year" means the calendar year, or the
160 fiscal year ending during such calendar year, upon the
161 basis of which tax liability is computed under this
162 article. "Taxable year" means, in case of a return
163 made for a fractional part of a year under the provi-
164 sions of this article, or under regulations promulgated
165 by the tax commissioner, the period for which such
166 return is made.

167 (18) "Taxpayer" means and includes any individual,

168 partnership, joint venture, association, corporation,
169 receiver, trustee, guardian, executor, administrator,
170 fiduciary or representative of any kind engaged in the
171 business of severing or processing (or both severing
172 and processing) natural resources in this state for sale
173 or use. In instances where contracts (either oral or
174 written) are entered into whereby persons, organiza-
175 tions or businesses are engaged in the business of
176 severing or processing (or both severing and process-
177 ing) a natural resource but do not obtain title to or do
178 not have an economic interest therein, the party who
179 owns the natural resource or has an economic interest
180 therein is the taxpayer.

181 (19) "This code" means the code of West Virginia,
182 one thousand nine hundred thirty-one, as amended.

183 (20) "This state" means the state of West Virginia.

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION
CREDIT.**

§11-13C-5. Application of annual credit allowance.

1 (a) *In general.* — The aggregate annual credit
2 allowance for the current taxable year is an amount
3 equal to the sum of the following as modified under
4 subsections (o) and (p) of this section:

5 (1) The one-tenth part allowed under section four of
6 this article for qualified investment placed into service
7 or use during a prior taxable year; plus

8 (2) The one-tenth part allowed under section four of
9 this article for qualified investment placed into service
10 or use during the current taxable year; plus

11 (3) The one-tenth part allowed under section four-a
12 of this article for locating corporate headquarters in
13 this state; or the amount allowed under section seven-
14 a of this article of the taxable year.

15 (b) *Application of current year annual credit allow-*
16 *ance.* — The amount determined under subsection (a)
17 of this section shall be allowed as a credit against that
18 portion of the taxpayer's state tax liability which is
19 attributable to and the direct result of the taxpayer's

20 qualified investment, and shall be applied as provided
21 in subsections (c) through (k), both inclusive, of this
22 section, and in that order.

23 (c) *Business and occupation taxes.* —

24 (1) That portion of the allowable credit attributable
25 to qualified investment in a business or other activity
26 subject to the taxes imposed by article thirteen of this
27 chapter, shall first be applied to reduce up to eighty
28 percent of the taxes imposed by said article for the
29 taxable year (determined before application of allow-
30 able credits against tax and the annual exemption).

31 (2) If the taxes due under said article thirteen are
32 not solely attributable to and the direct result of the
33 taxpayer's qualified investment in a business or other
34 activity taxable under article thirteen of this chapter,
35 the amount of such taxes, which are so attributable,
36 shall be determined by multiplying the amount of
37 taxes due under said article, for the taxable year
38 (determined before application of any allowable
39 credits against tax and the annual exemption), by a
40 fraction, the numerator of which is all wages, salaries
41 and other compensation paid during the taxable year
42 to all employees of the taxpayer employed in this
43 state, whose positions are directly attributable to the
44 qualified investment in a business or other activity
45 taxable under article thirteen of this chapter. The
46 denominator of the fraction shall be the wages,
47 salaries and other compensation paid during the
48 taxable year to all employees of the taxpayer
49 employed in this state, whose positions are directly
50 attributable to the business or other activity of the
51 taxpayer, that is taxable under said article.

52 (3) The annual exemption allowed by section three
53 of said article thirteen of this chapter, plus any credits
54 allowable under articles thirteen-d and thirteen-e of
55 this chapter, shall be applied against and reduce only
56 the portion of article thirteen taxes not apportioned to
57 the qualified investment under this article: *Provided,*
58 That any excess exemption or credits may be applied
59 against the amount of article thirteen taxes appor-

60 tioned to the qualified investment under this article,
61 that is not offset by the amount of annual credit
62 against such taxes allowed under this article for the
63 taxable year, unless their application is otherwise
64 prohibited by this chapter.

65 (d) *Carrier income taxes.* —

66 (1) That portion of the allowable credit attributable
67 to qualified investment in a business or other activity
68 subject to the taxes imposed by article twelve-a of this
69 chapter, shall first be applied to reduce up to eighty
70 percent of the taxes imposed by said article, for the
71 taxable year.

72 (2) If the taxes due under article twelve-a of this
73 chapter are not solely attributable to, and the direct
74 result of the taxpayer's qualified investment in a
75 business or other activity taxable under said article,
76 the amount of such taxes, which are so attributable,
77 shall be determined by multiplying the amount of
78 taxes due under said article for the taxable year, by a
79 fraction, the numerator of which is all wages, salaries
80 and other compensation paid during the taxable year
81 to all employees of the taxpayer employed in this
82 state, whose positions are directly attributable to the
83 qualified investment in a business or other activity
84 taxable under said article. The denominator of the
85 fraction shall be the wages, salaries and other compen-
86 sation paid during the taxable year to all employees of
87 the taxpayer, employed in this state, whose positions
88 are directly attributable to the business or other
89 activity of the taxpayer that is taxable under said
90 article.

91 (e) *Severance taxes.* —

92 (1) On and after the first day of July, one thousand
93 nine hundred eighty-seven, that portion of the allow-
94 able credit attributable to qualified investment in a
95 business or other activity subject to the tax imposed
96 by article thirteen-a of this chapter, and qualified
97 investment in a business or activity that was subject to
98 the tax imposed by article thirteen of this chapter
99 prior to said first day of July, but on and after said

100 first day of July, is subject to the tax imposed by
101 article thirteen-a of this chapter, shall first be applied
102 to reduce up to eighty percent of the taxes imposed by
103 said article for the taxable year (determined before
104 application of any allowable credits against tax).

105 (2) If the taxes due under article thirteen-a of this
106 chapter are not solely attributable to and the direct
107 result of the taxpayer's qualified investment in a
108 business or other activity taxable under article thir-
109 teen-a of this chapter, the amount of such taxes which
110 are so attributable, shall be determined by multiplying
111 the amount of taxes due under said article for the
112 taxable year (determined before application of any
113 allowable credits against tax), by a fraction, the
114 numerator of which is all wages, salaries and other
115 compensation paid during the taxable year to all
116 employees of the taxpayer employed in this state,
117 whose positions are directly attributable to the quali-
118 fied investment in a business or other activity taxable
119 under said article. The denominator of the fraction
120 shall be the wages, salaries and other compensation
121 paid during the taxable year to all employees of the
122 taxpayer employed in this state, whose positions are
123 directly attributable to the business or other activity of
124 the taxpayer that is taxable under said article.

125 (3) Any credits allowable under articles thirteen-d
126 and thirteen-e of this chapter shall be applied against
127 and reduce only the portion of article thirteen-a taxes
128 not apportioned to the qualified investment under this
129 article: *Provided*, That any excess credits may be
130 applied against the amount of article thirteen taxes
131 apportioned to the qualified investment under this
132 article, that is not offset by the amount of annual
133 credit against such taxes allowed under this article for
134 the taxable year, unless their application is otherwise
135 prohibited by this chapter.

136 (f) *Telecommunications taxes.* —

137 (1) On and after the first day of July, one thousand
138 nine hundred eighty-seven, that portion of the allow-
139 able credit attributable to qualified investment in a

140 business or other activity subject to the taxes imposed
141 by article thirteen-b of this chapter, shall first be
142 applied to reduce up to eighty percent of the taxes
143 imposed by said article for the taxable year (deter-
144 mined before application of allowable credits against
145 tax) and qualified investment in a business or activity
146 that was subject to the taxes imposed by article
147 twelve-a of this chapter prior to said first day of July,
148 but on and after said first day of July is subject to the
149 tax imposed by article thirteen-b of this chapter.

150 (2) If the taxes due under article thirteen-b are not
151 solely attributable to and the direct result of the
152 taxpayer's qualified investment in a business or other
153 activity taxable under said article, the amount of such
154 taxes, which are so attributable, shall be determined
155 by multiplying the amount of taxes due under said
156 article for the taxable year (determined before appli-
157 cation of any allowable credits against tax), by a
158 fraction, the numerator of which is all wages, salaries
159 and other compensation paid during the taxable year
160 to all employees of the taxpayer employed in this state
161 whose positions are directly attributable to the quali-
162 fied investment in a business or other activity taxable
163 under said article. The denominator of the fraction
164 shall be the wages, salaries and other compensation
165 paid during the taxable year to all employees of the
166 taxpayer employed in this state whose positions are
167 directly attributable to the business or other activity of
168 the taxpayer that is taxable under said article.

169 (g) *Business franchise tax.* —

170 (1) On and after the first day of July, one thousand
171 nine hundred eighty-seven, that portion of the allow-
172 able credit attributable to qualified investment in a
173 business or activity subject to the taxes imposed by
174 article twenty-three of this chapter, and qualified
175 investment in a business or activity that was subject to
176 the taxes imposed by article thirteen of this chapter
177 prior to said first day of July, but on and after said
178 first day of July, is subject to the tax imposed by
179 article twenty-three of this chapter, shall first be
180 applied to reduce up to eighty percent of the taxes

181 imposed by said article for the taxable year (deter-
182 mined after application of the credits against tax
183 provided in section seventeen of said article, but
184 before application of any other allowable credits
185 against tax).

186 (2) If the taxes due under article twenty-three of
187 this chapter are not solely attributable to and the
188 direct result of the taxpayer's qualified investment in
189 a business or other activity taxable under said article,
190 for the taxable year (determined after application of
191 the credits against tax provided in section seventeen of
192 said article, but before application of any other
193 allowable credits), by a fraction, the numerator of
194 which is all wages, salaries and other compensation
195 paid during the taxable year to all employees of the
196 taxpayer employed in this state, whose positions are
197 directly attributable to the qualified investment in a
198 business or other activity taxable under said article.
199 The denominator of the fraction shall be wages,
200 salaries and other compensation paid during the
201 taxable year to all employees of the taxpayer
202 employed in this state, whose positions are directly
203 attributable to the business or other activity of the
204 taxpayer that is taxable under said article.

205 (3) Any credits allowable under articles thirteen-d
206 and thirteen-e of this chapter shall be applied against
207 and reduce only the portion of article twenty-three
208 taxes not apportioned to the qualified investment
209 under this article: *Provided*, That any excess exemp-
210 tion or credits may be applied against the amount of
211 article twenty-three taxes apportioned to the qualified
212 investment under this article that is not offset by the
213 amount of annual credit against such taxes allowed
214 under this article for the taxable year, unless their
215 application is otherwise prohibited by this chapter.

216 (h) *Corporation net income taxes.* —

217 (1) After application of subsections (c) through (g),
218 both inclusive of this section, any unused credit shall
219 next be applied to reduce up to eighty percent of the
220 taxes imposed by article twenty-four of this chapter,

221 for the taxable year (determined before application of
222 allowable credits against tax).

223 (2) If the taxes due under article twenty-four of this
224 chapter (determined before application of allowable
225 credits against tax) are not solely attributable to and
226 the direct result of the taxpayer's qualified invest-
227 ment, the amount of such taxes which are so attribut-
228 able, shall be determined by multiplying the amount
229 of taxes due under said article for the taxable year
230 (determined before application of allowable credits
231 against tax), by a fraction, the numerator of which is
232 all wages, salaries and other compensation paid during
233 the taxable year to all employees of the taxpayer
234 employed in this state whose positions are directly
235 attributable to the qualified investment. The denomi-
236 nator of the fraction shall be the wages, salaries and
237 other compensation paid during the taxable year to all
238 employees of the taxpayer employed in this state.

239 (3) Any credits allowable under article twenty-four
240 of this chapter shall be applied against and reduce only
241 the amount of article twenty-four taxes not appor-
242 tioned to the qualified investment under this article:
243 *Provided*, That any excess credits may be applied
244 against the amount of article twenty-four taxes appor-
245 tioned to the qualified investment under this article
246 that is not offset by the amount of annual credit
247 against such taxes allowed under this article for the
248 taxable year, unless their application is otherwise
249 prohibited by this chapter.

250 (i) *Personal income taxes.* —

251 (1) If the person making the qualified investment is
252 an electing small business corporation (as defined in
253 Section 1361 of the United States Internal Revenue
254 Code of 1954, as amended), a partnership or a sole
255 proprietorship, then any unused credit (after applica-
256 tion of subsections (c), (d), (e), (f) and (g) shall be
257 allowed as a credit against up to eighty percent of the
258 taxes imposed by article twenty-one of this chapter on
259 the income from business or other activity subject to
260 tax under article twelve-a, thirteen, thirteen-a, thir-

261 teen-b or twenty-three of this chapter.

262 (2) Electing small business corporations, partnerships
263 and other unincorporated organizations shall allocate
264 the credit allowed by this article among its members
265 in the same manner as profits and losses are allocated
266 for the taxable year.

267 (3) If the amount of taxes due under article twenty-
268 one of this chapter (determined before application of
269 allowable credits against tax) that is attributable to
270 business, is not solely attributable to and the direct
271 result of the qualified investment of the electing small
272 business corporation, partnership, other unincorporat-
273 ed organization or sole proprietorship, the amount of
274 such taxes which are so attributable shall be deter-
275 mined by multiplying the amount of taxes due under
276 said article (determined before application of allowable
277 credits against tax), that is attributable to business by
278 a fraction, the numerator of which is all wages,
279 salaries and other compensation paid during the
280 taxable year to all employees of the electing small
281 business corporation, partnership, other unincorporat-
282 ed organization or sole proprietorship employed in this
283 state, whose positions are directly attributable to the
284 qualified investment. The denominator of the fraction
285 shall be the wages, salaries and other compensation
286 paid during the taxable year to all employees of the
287 taxpayer.

288 (4) No credit shall be allowed under this section
289 against any employer withholding taxes imposed by
290 article twenty-one of this chapter.

291 (j) For tax years beginning after the thirty-first day
292 of December, one thousand nine hundred ninety-two,
293 and thereafter, if the formula provisions of subsections
294 (c) through (i) of this section, inclusive, do not fairly
295 represent the taxes solely attributable to and the
296 direct result of the taxpayer's qualified investment of
297 the taxpayer and all other project participants in the
298 business or other activity subject to tax, the commis-
299 sioner may require, in respect to all or any part of the
300 taxpayer's businesses or activities, if reasonable:

- 301 (1) Separate accounting or identification; or
302 (2) Adjustment to the wages formula to reflect all
303 components of the tax liability; or
304 (3) The inclusion of one or more additional factors
305 which will fairly represent the taxes solely attribut-
306 able to and the direct result of the qualified invest-
307 ment of the taxpayer and all other project participants
308 in the businesses or other activities subject to tax; or
309 (4) The employment of any other method to effectu-
310 ate an equitable attribution of the taxes.

311 In order to effectuate the purposes of this subsec-
312 tion, the commissioner shall propose for promulgation
313 legislative rules in accordance with article three,
314 chapter twenty-nine-a of this code: *Provided*, That the
315 initial promulgation may be by emergency rule. The
316 rule shall set forth the standards by which this
317 subsection will be implemented and enforced: *Provid-*
318 *ed, however*, That with regard to investment placed in
319 service prior to the passage of this provision, taxpayers
320 having a specific written determination from the tax
321 commissioner that the taxpayer is authorized or
322 required to take credit against tax not attributable to
323 qualified investment shall not be subject to the
324 alternative allocation of credit provided for under this
325 subsection.

326 (k) *Sales and use taxes.* —

327 On and after the first day of July, one thousand nine
328 hundred eighty-seven, for purchases of tangible per-
329 sonal property and taxable services made on or after
330 that date, that portion of the allowable credit, which is
331 attributable to qualified investment in a business or
332 activity subject to the taxes imposed by articles fifteen
333 and fifteen-a of this chapter on purchases for use or
334 consumption in the conduct of such business or
335 activity, shall be applied to reduce up to eighty percent
336 of the taxes imposed by said articles on purchases that
337 are directly used or consumed in the qualified invest-
338 ment activity. When property and services purchased
339 for use or consumption are not solely used or con-

340 sumed in the qualified investment activity, the cost
341 thereof shall be apportioned between such activities.
342 Only that amount apportioned to purchases directly
343 used or consumed in the qualified investment activity
344 shall be included when applying the credit allowable
345 under this subsection. On and after the first day of
346 July, one thousand nine hundred ninety-three, for
347 purchases of tangible personal property and taxable
348 services made on or after that date for use or con-
349 sumption in the conduct of business, no portion of the
350 allowable credit may be applied against the taxes
351 imposed by said articles.

352 (1) *Ad valorem property taxes; unemployment taxes*
353 *and workers' compensation premiums. —*

354 (1) After application of subsections (a) through (i),
355 both inclusive, of this section, any unused credit shall
356 be applied as a rebate for payment of the sum of the
357 following amounts:

358 (A) Eighty percent of the ad valorem property taxes
359 imposed by levying bodies pursuant to article eight of
360 this chapter, for the taxable year (including payments
361 in lieu of such taxes), on property of the taxpayer that
362 is directly attributable to the qualified investment
363 (including property having a useful life of less than
364 four years) of the taxpayer, in the new or expanded
365 business facility of the taxpayer resulting in new jobs;
366 plus

367 (B) Eighty percent of the taxes imposed by article
368 five, chapter twenty-one-a of this code for the taxable
369 year attributable to the compensation of new
370 employees filling the new jobs that are directly
371 attributable to the qualified investment; plus

372 (C) Twenty percent of the workers' compensation
373 premiums imposed by article two, chapter twenty-
374 three of this code, for the taxable year attributable to
375 the compensation paid new employees filling the new
376 jobs, that are directly attributable to the qualified
377 investment.

378 (2) A taxpayer eligible to claim this rebate shall

379 apply either the amount of the unused credit or the
380 sum determined under subdivision (1) of this subsec-
381 tion, whichever is less, against the remaining twenty
382 percent of the taxes imposed by articles twelve-a,
383 thirteen, thirteen-a, thirteen-b, twenty-one, twenty-
384 three and twenty-four of this chapter, attributable to
385 the qualified investment under this article. If any
386 amount of rebate remains after its application against
387 the remaining twenty percent of taxes as aforesaid,
388 the amount remaining shall be carried forward to each
389 ensuing tax year until used or the expiration of the
390 twelfth subsequent tax year in which the qualified
391 investment was placed in service or use in this state
392 by the taxpayer.

393 (m) *Unused credit forfeited.* — If any credit remains
394 after application of subsection (b) of this subsection,
395 the amount thereof shall be forfeited. No carryover to
396 a subsequent taxable year or carryback to a prior
397 taxable year shall be allowed for the amount of any
398 unused portion of any annual credit allowance, except
399 as specifically provided in subsection (l), (o) or (p) of
400 this section.

401 (n) Notwithstanding any provision of this section to
402 the contrary and notwithstanding the reenactment of
403 this section later in time than the enactment or
404 reenactment of section fourteen of this article, the
405 restrictions, limitations, constraints and provisions of
406 said section shall apply to and supersede the provisions
407 of this section.

408 (o) *Deferral of twenty percent of annual credit,*
409 *eighty percent current limitation.* —

410 (1) Eighty percent of the amount of annual credit
411 calculated under subsections (a) through (n) of this
412 section before application of the minimum severance
413 tax against coal and before the adjustment set forth in
414 subsection (p) of this section, shall be applied against
415 the taxes enumerated in subsections (c) through (i),
416 inclusive, of this section for the current tax year.

417 (2) The remaining twenty percent of such annual
418 credit so calculated in subsections (c) through (n) of

419 this section shall be applied against the taxes enumer-
420 ated in subsections (c) through (i), inclusive, of this
421 section beginning in the tenth tax year subsequent to
422 the tax year in which qualified investment was first
423 placed in service or use in this state by the taxpayer,
424 and the amount thereof remaining shall be carried
425 forward each ensuing tax year until used or until the
426 expiration of the twelfth tax year subsequent to the
427 tax year in which qualified investment was first
428 placed in service or use in this state by the taxpayer.
429 No deferral of credit under this subsection shall apply
430 to this credit when applied in such tenth through
431 twelfth years.

432 (p) *Additional allowance.* —

433 (1) After application of up to eighty percent of
434 annual credit against the taxes enumerated in subsec-
435 tions (c) through (i), inclusive, of this section for the
436 current tax year under subsection (o) of this section,
437 there shall be allowed an additional amount of credit,
438 as determined under subdivision (2) of this subsection,
439 which may offset up to one hundred percent of the
440 remaining taxes enumerated in subsections (g), (h)
441 and (i), in that order, of this section for the current tax
442 year. Any credit calculated and determined under this
443 subsection which remains after application against the
444 taxes enumerated in subsections (g), (h) and (i) under
445 this subsection shall be forfeited and shall not car-
446 ryover to any other taxable year.

447 (2) The amount of credit allowable under this
448 subsection shall be the lesser of one third of the
449 taxpayer's minimum severance tax on coal payable, or
450 the taxpayer's net minimum severance tax on coal
451 payable. For purposes of this subsection, the term "net
452 minimum severance tax on coal payable" means the
453 amount of the excess of the minimum severance tax
454 on coal over the amount of the state severance tax on
455 coal severed and extracted by the taxpayer in this
456 state not including the additional severance tax on coal
457 imposed by section six, article thirteen-a of this
458 chapter, calculated after application of the credit
459 allowed under this article, and before application of all

460 other credits, and after application of the five hundred
461 dollar exemption to the said severance tax on coal.

462 (q) *Effective date.* —

463 (1) This section, as amended in the year one thou-
464 sand nine hundred eighty-six, shall be effective upon
465 passage. It shall be retroactive, and shall be in lieu of
466 the method provided by this section for application of
467 this credit prior to this amendment, for qualified
468 investment made on or after the first day of March,
469 one thousand nine hundred eighty-five.

470 (2) This section as amended in the year one thou-
471 sand nine hundred eighty-seven, shall be effective for
472 taxable years ending after the thirtieth day of June,
473 one thousand nine hundred eighty-seven.

474 (3) This section as amended in the year one thou-
475 sand nine hundred ninety-three, shall be effective for
476 taxable years ending after the thirty-first day of May,
477 one thousand nine hundred ninety-three.

**§11-13C-15. One year suspension of new credit entitlements,
exceptions, effective date.**

1 (a) Notwithstanding any other provision of this
2 article to the contrary, no entitlement to the business
3 investment and jobs expansion tax credit under this
4 article shall result from, and no credit shall be
5 available to any taxpayer for, investment placed in
6 service or use during the period beginning on the date
7 of passage of this section by the Legislature, and
8 ending on the three hundred and sixty sixth day
9 thereafter.

10 (b) The suspension of new entitlements to credits set
11 forth in subsection (a) of this section shall not apply to
12 companies, entities or taxpayers engaged in the
13 following industries or business activities:

14 (1) Manufacturing, including, but not limited to,
15 chemical processing and chemical manufacturing,
16 manufacture of wood products and forestry products,
17 manufacture of aluminum, manufacture of paper,
18 paper processing, recyclable paper processing, food

19 processing, manufacture of aircraft or aircraft parts,
20 manufacture of automobiles or automobile parts, and
21 all other manufacturing activities, but not timbering
22 or timber severance or timber hauling, or mineral
23 severance, hauling, processing or preparation, or coal
24 severance, hauling, processing or preparation;

25 (2) Information processing, including, but not limited
26 to, telemarketing, information processing, systems
27 engineering, backoffice operations and software
28 development;

29 (3) The activity of warehousing, including, but not
30 limited to, commercial warehousing and the operation
31 of regional distribution centers by manufacturers,
32 wholesalers or retailers;

33 (4) The activity of goods distribution;

34 (5) Destination oriented recreation and tourism.

35 (c) Notwithstanding the fact that a company, entity
36 or taxpayer is engaged in an industry or business
37 activity enumerated in subsection (b) of this section,
38 such company, entity or taxpayer must qualify for the
39 business investment and jobs expansion tax credit by
40 fulfilling the qualified investment, jobs creation and
41 other credit entitlement requirements of the business
42 investment and jobs expansion tax credit act in order
43 to obtain entitlement to any credit under this article.
44 Failure to fulfill the statutory requirements of the
45 business investment and jobs expansion tax credit act
46 will result in a partial or complete loss of the tax
47 credit.

48 (d) *Transition rule.* — Notwithstanding any provi-
49 sion herein contained to the contrary, this section shall
50 not apply to investments for which applications for
51 credit or applications for projected certification were
52 filed prior to the effective date of this section.

53 (e) *Effective date.* — This section shall be effective
54 upon passage by the Legislature.

55 (f) *Reports to the Legislature.* — On or before the
56 fifteenth day of January, one thousand nine hundred

57 ninety-four, the secretary of the department of tax
58 and revenue shall submit a report to the governor, the
59 president of the Senate and the speaker of the House
60 of Delegates. The report shall include recommenda-
61 tions regarding a tax credit to promote economic
62 development to replace the business investment and
63 jobs expansion credit provided pursuant to this article.
64 The recommended replacement credit should provide
65 for a maximum amount of total credit which may be
66 taken by all taxpayers in any one year so that the total
67 fiscal impact of the credit to the state can be readily
68 determined. The secretary shall consult with all other
69 state agencies that are responsible for economic
70 development in this state and include any recommen-
71 dations forthcoming from those agencies in the report.

**ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZATION,
FOR RESEARCH AND DEVELOPMENT PROJECTS,
CERTAIN HOUSING DEVELOPMENTS AND MAN-
AGEMENT INFORMATION SERVICES FACILITIES.**

§11-13D-3e. Application of credit after June 30, 1993.

1 Notwithstanding any other provision of this code to
2 the contrary, for taxable years ending on and after the
3 first day of July, one thousand nine hundred ninety-
4 three, the credits allowed under section three may not
5 be applied to reduce the taxes imposed by articles
6 fifteen and fifteen-a of this chapter: *Provided*, That
7 this section shall not apply to credits allowed under
8 subsection (g), section three of this article for qualified
9 housing development projects existing in this state on
10 or before the first day of July, one thousand nine
11 hundred ninety-two.

**ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR
COAL LOADING FACILITIES.**

§11-13E-3b. Application of credit after June 30, 1993.

1 Notwithstanding any other provision of this code to
2 the contrary, for taxable years ending on and after the
3 first day of July, one thousand nine hundred ninety-
4 three, the credits allowed under section three may not

5 be applied to reduce the taxes imposed by articles
6 fifteen and fifteen-a of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership,
3 association, corporation, state or its political subdivi-
4 sions or agency of either, guardian, trustee, committee,
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax
7 commissioner.

8 (c) "Gross proceeds" means the amount received in
9 money, credits, property or other consideration from
10 sales and services within this state, without deduction
11 on account of the cost of property sold, amounts paid
12 for interest or discounts or other expenses whatsoever.
13 Losses shall not be deducted, but any credit or refund
14 made for goods returned may be deducted.

15 (d) "Sale", "sales" or "selling" includes any transfer
16 of the possession or ownership of tangible personal
17 property for a consideration, including a lease or
18 rental, when the transfer or delivery is made in the
19 ordinary course of the transferor's business and is
20 made to the transferee or his agent for consumption or
21 use or any other purpose.

22 (e) "Vendor" means any person engaged in this state
23 in furnishing services taxed by this article or making
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a
26 person who uses or consumes services or personal
27 property.

28 (g) "Business" includes all activities engaged in or
29 caused to be engaged in with the object of gain or
30 economic benefit, direct or indirect, and all activities
31 of the state and its political subdivisions which involve
32 sales of tangible personal property or the rendering of
33 services when those service activities compete with or

34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties
36 levied hereunder.

37 (i) "Service" or "selected service" includes all
38 nonprofessional activities engaged in for other persons
39 for a consideration, which involve the rendering of a
40 service as distinguished from the sale of tangible
41 personal property, but shall not include contracting,
42 personal services or the services rendered by an
43 employee to his employer or any service rendered for
44 resale.

45 (j) "Purchaser" means a person who purchases
46 tangible personal property or a service taxed by this
47 article.

48 (k) "Personal service" includes those:

49 (1) Compensated by the payment of wages in the
50 ordinary course of employment; and

51 (2) Rendered to the person of an individual without,
52 at the same time, selling tangible personal property,
53 such as nursing, barbering, shoe shining, manicuring
54 and similar services.

55 (l) "Taxpayer" means any person liable for the tax
56 imposed by this article.

57 (m) "Drugs" includes all sales of drugs or appliances
58 to a purchaser, upon prescription of a physician or
59 dentist and any other professional person licensed to
60 prescribe.

61 (n) (1) "Directly used or consumed" in the activities
62 of manufacturing, transportation, transmission, com-
63 munication or the production of natural resources
64 means used or consumed in those activities or opera-
65 tions which constitute an integral and essential part of
66 such activities, as contrasted with and distinguished
67 from those activities or operations which are simply
68 incidental, convenient or remote to such activities.

69 (2) Uses of property or consumption of services
70 which constitute direct use or consumption in the

71 activities of manufacturing, transportation, transmis-
72 sion, communication or the production of natural
73 resources includes only:

74 (A) In the case of tangible personal property, phys-
75 ical incorporation of property into a finished product
76 resulting from manufacturing production or the
77 production of natural resources;

78 (B) Causing a direct physical, chemical or other
79 change upon property undergoing manufacturing
80 production or production of natural resources;

81 (C) Transporting or storing property undergoing
82 transportation, communication, transmission, manu-
83 facturing production or production of natural
84 resources;

85 (D) Measuring or verifying a change in property
86 directly used in transportation, communication, trans-
87 mission, manufacturing production or production of
88 natural resources;

89 (E) Physically controlling or directing the physical
90 movement or operation of property directly used in
91 transportation, communication, transmission, manu-
92 facturing production or production of natural
93 resources;

94 (F) Directly and physically recording the flow of
95 property undergoing transportation, communication,
96 transmission, manufacturing production or production
97 of natural resources;

98 (G) Producing energy for property directly used in
99 transportation, communication, transmission, manu-
100 facturing production or production of natural
101 resources;

102 (H) Facilitating the transmission of gas, water, steam
103 or electricity from the point of their diversion to
104 property directly used in transportation, communica-
105 tion, transmission, manufacturing production or pro-
106 duction of natural resources;

107 (I) Controlling or otherwise regulating atmospheric
108 conditions required for transportation, communication,

109 transmission, manufacturing production or production
110 of natural resources;

111 (J) Serving as an operating supply for property
112 undergoing transmission, manufacturing production or
113 production of natural resources, or for property
114 directly used in transportation, communication, trans-
115 mission, manufacturing production or production of
116 natural resources;

117 (K) Maintenance or repair of property, including
118 maintenance equipment, directly used in transporta-
119 tion, communication, transmission, manufacturing
120 production or production of natural resources;

121 (L) Storage, removal or transportation of economic
122 waste resulting from the activities of manufacturing,
123 transportation, communication, transmission or the
124 production of natural resources;

125 (M) Pollution control or environmental quality or
126 protection activity directly relating to the activities of
127 manufacturing, transportation, communication, trans-
128 mission or the production of natural resources and
129 personnel, plant, product or community safety or
130 security activity directly relating to the activities of
131 manufacturing, transportation, communication, trans-
132 mission or the production of natural resources; or

133 (N) Otherwise be used as an integral and essential
134 part of transportation, communication, transmission,
135 manufacturing production or production of natural
136 resources.

137 (3) Uses of property or services which would not
138 constitute direct use or consumption in the activities of
139 manufacturing, transportation, transmission, commu-
140 nication or the production of natural resources
141 includes, but are not limited to:

142 (A) Heating and illumination of office buildings;

143 (B) Janitorial or general cleaning activities;

144 (C) Personal comfort of personnel;

145 (D) Production planning, scheduling of work, or

146 inventory control;

147 (E) Marketing, general management, supervision,
148 finance, training, accounting and administration; or

149 (F) An activity or function incidental or convenient
150 to transportation, communication, transmission, manu-
151 facturing production or production of natural resour-
152 ces, rather than an integral and essential part of such
153 activities.

154 (o) "Contracting":

155 (1) *In general.* — "Contracting" means and includes
156 the furnishing of work, or both materials and work,
157 for another (by a sole contractor, general contractor,
158 prime contractor or subcontractor) in fulfillment of a
159 contract for the construction, alteration, repair, deco-
160 ration or improvement of a new or existing building or
161 structure, or any part thereof, or for removal or
162 demolition of a building or structure, or any part
163 thereof, or for the alteration, improvement or develop-
164 ment of real property.

165 (2) *Form of contract not controlling.* — An activity
166 that falls within the scope of the definition of contract-
167 ing shall constitute contracting regardless of whether
168 such contract governing the activity is written or
169 verbal and regardless of whether it is in substance or
170 form a lump sum contract, a cost-plus contract, a time
171 and materials contract, whether or not open-ended, or
172 any other kind of construction contract.

173 (3) *Special rules.* — For purposes of this definition:

174 (A) The term "structure" includes, but is not limited
175 to, everything built up or composed of parts joined
176 together in some definite manner and attached or
177 affixed to real property, or which adds utility to real
178 property or any part thereof, or which adds utility to
179 a particular parcel of property and is intended to
180 remain there for an indefinite period of time.

181 (B) The term "alteration" means, and is limited to,
182 alterations which are capital improvements to a
183 building or structure or to real property.

184 (C) The term "repair" means, and is limited to,
185 repairs which are capital improvements to a building
186 or structure or to real property.

187 (D) The term "decoration" means, and is limited to,
188 decorations which are capital improvements to a
189 building or structure or to real property.

190 (E) The term "improvement" means, and is limited
191 to, improvements which are capital improvements to a
192 building or structure or to real property.

193 (F) The term "capital improvement" means
194 improvements that are affixed to or attached to and
195 become a part of a building or structure or the real
196 property or which add utility to real property or any
197 part thereof and that last, or are intended to be
198 relatively permanent. As used herein, "relatively
199 permanent" means lasting at least a year or longer in
200 duration without the necessity for regularly scheduled
201 recurring service to maintain such capital improve-
202 ment. "Regular recurring service" means regularly
203 scheduled service intervals of less than one year.

204 (G) Contracting does not include the furnishing of
205 work, or both materials and work in the nature of
206 hookup, connection, installation or other services if
207 such service is incidental to the retail sale of tangible
208 personal property from the service provider's invento-
209 ry: *Provided*, That such hookup, connection or instal-
210 lation of the foregoing is incidental to the sale of the
211 same and performed by the seller thereof or per-
212 formed in accordance with arrangements made by the
213 seller thereof. Examples of transactions that are
214 excluded from the definition of contracting pursuant
215 hereto include, but are not limited to, the sale of wall-
216 to-wall carpeting and the installation of wall-to-wall
217 carpeting, the sale, hookup and connection of mobile
218 homes, window air conditioning units, dishwashers,
219 clothing washing machines or dryers, other household
220 appliances, drapery rods, window shades, venetian
221 blinds, canvas awnings, free standing industrial or
222 commercial equipment and other similar items of
223 tangible personal property. Repairs made to the

224 foregoing are within the definition of contracting if
225 such repairs involve permanently affixing to or
226 improving real property or something attached thereto
227 which extends the life of the real property or some-
228 thing affixed thereto or allows or is intended to allow
229 such real property or thing permanently attached
230 thereto to remain in service for a year or longer.

231 (p) "Manufacturing" means a systematic operation
232 or integrated series of systematic operations engaged
233 in as a business or segment of a business which
234 transforms or converts tangible personal property by
235 physical, chemical or other means into a different
236 form, composition or character from that in which it
237 originally existed.

238 (q) "Transportation" means the act or process of
239 conveying, as a commercial enterprise, passengers or
240 goods from one place or geographical location to
241 another place or geographical location.

242 (r) "Transmission" means the act or process of
243 causing liquid, natural gas or electricity to pass or be
244 conveyed from one place or geographical location to
245 another place or geographical location through a
246 pipeline or other medium for commercial purposes.

247 (s) "Communication" means all telephone, radio,
248 light, light wave, radio telephone, telegraph and other
249 communication or means of communication, whether
250 used for voice communication, computer data trans-
251 mission or other encoded symbolic information
252 transfers and shall include commercial broadcast
253 radio, commercial broadcast television and cable
254 television.

255 (t) "Production of natural resources" means the
256 performance, by either the owner of the natural
257 resources or another, of the act or process of exploring,
258 developing, severing, extracting, reducing to posses-
259 sion, processing and loading for shipment and ship-
260 ment for sale, profit or commercial use of any natural
261 resource products and any reclamation, waste disposal
262 or environmental activities associated therewith.

263 (u) "Management information services facility"
264 means a building, or any part thereof, or a complex of
265 buildings, or any part thereof, including the machin-
266 ery and equipment located therein, that is exclusively
267 dedicated to providing management information servi-
268 ces to the owner or operator thereof or to another
269 person.

270 (v) "Management information services" means, and
271 is limited to, data processing, data storage, data
272 recovery and backup, programming recovery and
273 backup, telecommunications, computation and com-
274 puter processing, computer programming, electronic
275 information, and data management activities, or any
276 combination of such activities, when such activity, or
277 activities, is not subject to regulation by the West
278 Virginia public service commission and such activity,
279 or activities, is for the purpose of managing, planning
280 for, organizing, or operating, any industrial or com-
281 mercial business, or any enterprise, facility or facilities
282 of an industrial or commercial business, whether such
283 industrial or commercial business or enterprise,
284 facility or facilities of an industrial or commercial
285 business is located within or without this state and
286 without regard to whether such industrial or commer-
287 cial business, or enterprise, facility or facilities of an
288 industrial or commercial business is owned by the
289 provider of the management information services or
290 by a "related person", as defined in Section 267(b) of
291 the Internal Revenue Code of 1986, as amended.

292 (w) (1) "Directly used or consumed" in the activities
293 of gas storage, the generation or production or sale of
294 electric power, the provision of a public utility service
295 or the operation of a utility business, means used or
296 consumed in those activities or operations which
297 constitute an integral and essential part of such
298 activities or operation, as contrasted with and distin-
299 guished from activities or operations which are simply
300 incidental, convenient or remote to such activities.

301 (2) Uses of property or consumption of services
302 which constitute direct use or consumption in the
303 activities of gas storage, the generation or production

304 of sale of electric power, the provision of a public
305 utility service or the operation of a utility business
306 include only:

307 (A) Tangible personal property or services, including
308 equipment, machinery, apparatus, supplies, fuel and
309 power and appliances, which are used immediately in
310 production or generation activities and equipment,
311 machinery, supplies, tools and repair parts used to
312 keep in operation exempt production or generation
313 devices. For purposes of this subsection, production or
314 generation activities shall commence from the intake,
315 receipt or storage of raw materials at the production
316 plant site;

317 (B) Tangible personal property or services, including
318 equipment, machinery, apparatus, supplies, fuel and
319 power, appliances, pipes, wires and mains which are
320 used immediately in the transmission or distribution
321 of gas, water and electricity to the public, and equip-
322 ment, machinery, tools, repair parts and supplies used
323 to keep in operation exempt transmission or distribu-
324 tion devices, and such vehicles and their equipment as
325 are specifically designed and equipped for such pur-
326 poses are exempt from the tax when used to keep a
327 transmission or distribution system in operation or
328 repair. For purposes of this subsection, transmission or
329 distribution activities shall commence from the close
330 of production at a production plant or wellhead when
331 a product is ready for transmission or distribution to
332 the public and shall conclude at the point where the
333 product is received by the public;

334 (C) Tangible personal property or services, including
335 equipment, machinery, apparatus, supplies, fuel and
336 power, appliance, pipes, wires and mains, which are
337 used immediately in the storage of gas or water, and
338 equipment, machinery, tools, supplies and repair parts
339 used to keep in operation exempt storage devices.

340 (D) Tangible personal property or services used
341 immediately in the storage, removal or transportation
342 of economic waste resulting from the activities of gas
343 storage, the generation or production or sale of electric

344 power, the provision of a public utility service, or the
345 operation of a utility business.

346 (E) Tangible personal property or services used
347 immediately in pollution control or environmental
348 quality or protection activity or community safety or
349 security directly relating to the activities of gas
350 storage, generation or production or sale of electric
351 power, the provision of a public utility service or the
352 operation of a utility business.

353 (3) Uses of property or services which would not
354 constitute direct use or consumption in the activities of
355 gas storage, generation or production or sale of electric
356 power, the provision of a public utility service or the
357 operation of a utility business include, but are not
358 limited to:

359 (A) Heating and illumination of office buildings;

360 (B) Janitorial or general cleaning activities;

361 (C) Personal comfort of personnel;

362 (D) Production planning, scheduling of work or
363 inventory control;

364 (E) Marketing, general management, supervision,
365 finance, training, accounting and administration; or

366 (F) An activity or function incidental or convenient
367 to the activities of gas storage, generation or produc-
368 tion or sale of electric power, the provision of public
369 utility service or the operation of a utility business.

370 (x) "Gas storage" means the injection of gas into a
371 storage reservoir, or the storage of gas for any period
372 of time in a storage reservoir, or the withdrawal of gas
373 from a storage reservoir, engaged in by businesses
374 subject to the business and occupation tax imposed by
375 sections two and two-e, article thirteen, chapter eleven
376 of this code.

377 (y) "Generating or producing or selling of electric
378 power" means the generation, production or sale of
379 electric power engaged in by businesses subject to the
380 business and occupation tax imposed by sections two,

381 two-d, two-m or two-n, article thirteen, chapter eleven
382 of this code.

383 (z) "Providing a public service or the operating of a
384 utility business" means the providing of a public
385 service or the operating of a utility by businesses
386 subject to the business and occupation tax imposed by
387 sections two and two-d, article thirteen of this chapter.

§11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to
3 consumers through mains or pipes and sales of
4 electricity;

5 (b) Sales of textbooks required to be used in any of
6 the schools of this state or in any institution in this
7 state which qualifies as a nonprofit or educational
8 institution subject to the West Virginia department of
9 education and the arts, board of trustees of the
10 university system of West Virginia or the board of
11 directors for colleges located in this state;

12 (c) Sales of property or services to the state, its
13 institutions or subdivisions, governmental units,
14 institutions or subdivisions of other states: *Provided,*
15 That the law of such other state provides the same
16 exemption to governmental units or subdivisions of
17 this state and to the United States, including agencies
18 of federal, state or local governments for distribution
19 in public welfare or relief work;

20 (d) Sales of vehicles which are titled by the division
21 of motor vehicles and which are subject to the tax
22 imposed by section four, article three, chapter seven-
23 teen-a of this code, or like tax;

24 (e) Sales of property or services to churches and
25 bona fide charitable organizations who make no
26 charge whatsoever for the services they render:
27 *Provided,* That the exemption herein granted shall
28 apply only to services, equipment, supplies, food for
29 meals and materials directly used or consumed by
30 these organizations, and shall not apply to purchases of

31 gasoline or special fuel;

32 (f) Sales of tangible personal property or services to
33 a corporation or organization which has a current
34 registration certificate issued under article twelve of
35 this chapter is exempt from federal income taxes
36 under Section 501(c)(3) or (c)(4) of the Internal Reve-
37 nue Code of 1986, as amended, and is:

38 (1) A church or a convention or association of
39 churches as defined in Section 170 of the Internal
40 Revenue Code of 1986, as amended;

41 (2) An elementary or secondary school which main-
42 tains a regular faculty and curriculum and has a
43 regularly enrolled body of pupils or students in
44 attendance at the place in this state where its educa-
45 tional activities are regularly carried on;

46 (3) A corporation or organization which annually
47 receives more than one half of its support from any
48 combination of gifts, grants, direct or indirect charita-
49 ble contributions or membership fees;

50 (4) An organization which has no paid employees
51 and its gross income from fund raisers, less reasonable
52 and necessary expenses incurred to raise such gross
53 income (or the tangible personal property or services
54 purchased with such net income), is donated to an
55 organization which is exempt from income taxes
56 under Section 501(c)(3) or (c)(4) of the Internal Reve-
57 nue Code of 1986, as amended;

58 (5) A youth organization, such as the girl scouts of
59 the United States of America, the boy scouts of
60 America or the YMCA Indian guide/princess program
61 and the local affiliates thereof, which is organized and
62 operated exclusively for charitable purposes and has as
63 its primary purpose the nonsectarian character devel-
64 opment and citizenship training of its members;

65 (6) For purposes of this subsection:

66 (A) The term "support" includes, but is not limited
67 to:

68 (i) Gifts, grants, contributions or membership fees;

69 (ii) Gross receipts from fund raisers which include
70 receipts from admissions, sales of merchandise, perfor-
71 mance of services or furnishing of facilities in any
72 activity which is not an unrelated trade or business
73 within the meaning of Section 513 of the Internal
74 Revenue Code of 1986, as amended;

75 (iii) Net income from unrelated business activities,
76 whether or not such activities are carried on regularly
77 as a trade or business;

78 (iv) Gross investment income as defined in Section
79 509(e) of the Internal Revenue Code of 1986, as
80 amended;

81 (v) Tax revenues levied for the benefit of a corpora-
82 tion or organization either paid to or expended on
83 behalf of such organization; and

84 (vi) The value of services or facilities (exclusive of
85 services or facilities generally furnished to the public
86 without charge) furnished by a governmental unit
87 referred to in Section 170(c)(1) of the Internal Revenue
88 Code of 1986, as amended, to an organization without
89 charge. This term does not include any gain from the
90 sale or other disposition of property which would be
91 considered as gain from the sale or exchange of a
92 capital asset, or the value of an exemption from any
93 federal, state or local tax or any similar benefit;

94 (B) The term "charitable contribution" means a
95 contribution or gift to or for the use of a corporation
96 or organization, described in Section 170(c)(2) of the
97 Internal Revenue Code of 1986, as amended;

98 (C) The term "membership fee" does not include
99 any amounts paid for tangible personal property or
100 specific services rendered to members by the corpora-
101 tion or organization; or

102 (7) The exemption allowed by this subdivision does
103 not apply to sales of gasoline or special fuel or to sales
104 of tangible personal property or services to be used or
105 consumed in the generation of unrelated business
106 income as defined in Section 513 of the Internal
107 Revenue Code of 1986, as amended. The provisions of

108 this subsection as amended by this article shall apply
109 to sales made after the thirtieth day of June, one
110 thousand nine hundred eighty-nine: *Provided*, That
111 the exemption herein granted shall apply only to
112 services, equipment, supplies and materials used or
113 consumed in the activities for which such organiza-
114 tions qualify as tax exempt organizations under the
115 Internal Revenue Code by these organizations and
116 shall not apply to purchases of gasoline or special fuel;

117 (g) Sales of property or services to persons engaged
118 in this state in the business of manufacturing, trans-
119 portation, transmission, communication or in the
120 production of natural resources: *Provided*, That on and
121 after the first day of July, one thousand nine hundred
122 eighty-seven, the exemption provided in this subsec-
123 tion shall apply only to services, machinery, supplies
124 and materials directly used or consumed in the
125 activities of manufacturing, transportation, transmis-
126 sion, communication or the production of natural
127 resources in the businesses or organizations named
128 above and shall not apply to purchases of gasoline or
129 special fuel: *Provided, however*, That on and after the
130 first day of May, one thousand nine hundred ninety-
131 three, the exemption provided in this subsection shall
132 apply only to services, machinery, supplies and mate-
133 rials directly used or consumed in the activities of
134 manufacturing, transportation, transmission, commu-
135 nication, production of natural resources, gas storage,
136 generation or production of selling electric power,
137 provision of a public utility service or the operation of
138 a utility service or the operation of a utility business,
139 in the businesses or organizations named above and
140 shall not apply to purchases of gasoline or gasoline or
141 special fuel;

142 (h) An isolated transaction in which any taxable
143 service or any tangible personal property is sold,
144 transferred, offered for sale or delivered by the owner
145 thereof or by his representative for the owner's
146 account, such sale, transfer, offer for sale or delivery
147 not being made in the ordinary course of repeated and
148 successive transactions of like character by such owner

149 or on his account by such representative: *Provided,*
150 That nothing contained herein may be construed to
151 prevent an owner who sells, transfers or offers for sale
152 tangible personal property in an isolated transaction
153 through an auctioneer from availing himself or herself
154 of the exemption provided herein, regardless where
155 such isolated sale takes place. The tax commissioner
156 may adopt such legislative rule pursuant to chapter
157 twenty-nine-a of this code as he deems necessary for
158 the efficient administration of this exemption;

159 (i) Sales of tangible personal property or of any
160 taxable services rendered for use or consumption in
161 connection with the commercial production of an
162 agricultural product the ultimate sale of which will be
163 subject to the tax imposed by this article or which
164 would have been subject to tax under this article:
165 *Provided,* That sales of tangible personal property and
166 services to be used or consumed in the construction of
167 or permanent improvement to real property and sales
168 of gasoline and special fuel shall not be exempt:
169 *Provided, however,* That nails and fencing shall not be
170 considered as improvements to real property;

171 (j) Sales of tangible personal property to a person for
172 the purpose of resale in the form of tangible personal
173 property: *Provided,* That sales of gasoline and special
174 fuel by distributors and importers shall be taxable
175 except when the sale is to another distributor for
176 resale: *Provided, however,* That sales of building
177 materials or building supplies or other property to any
178 person engaging in the activity of contracting, as
179 defined in this article, which is to be installed in,
180 affixed to or incorporated by such person or his agent
181 into any real property, building or structure shall not
182 be exempt under this subsection, except that sales of
183 tangible personal property to a person engaging in the
184 activity of contracting pursuant to a written contract
185 with the United States, this state, or with a political
186 subdivision thereof, or with a public corporation
187 created by the Legislature or by another governmental
188 entity pursuant to an act of the Legislature, for a
189 building or structure, or improvement thereto, or

190 other improvement to real property that is or will be
191 owned and used by the governmental entity for a
192 governmental or proprietary purpose, who incorpo-
193 rates such property in such building, structure or
194 improvement shall, with respect to such tangible
195 personal property, nevertheless be deemed to be the
196 vendor of such property to the governmental entity
197 and any person seeking to qualify for and assert this
198 exception must do so pursuant to such legislative rules
199 and regulations as the tax commissioner may promul-
200 gate and upon such forms as the tax commissioner
201 may prescribe. A subcontractor who, pursuant to a
202 written subcontract with a prime contractor who
203 qualifies for this exception, provides equipment, or
204 materials, and labor to such a prime contractor shall
205 be treated in the same manner as the prime contractor
206 is treated with respect to the prime contract under
207 this exception and the legislative rules and regulations
208 promulgated by the tax commissioner: *Provided*
209 *further*, That the exemption for government contrac-
210 tors in the preceding proviso shall expire on the first
211 day of October, one thousand nine hundred ninety,
212 subject to the transition rules set forth in section
213 eight-c of this article;

214 (k) Sales of property or services to nationally
215 chartered fraternal or social organizations for the sole
216 purpose of free distribution in public welfare or relief
217 work: *Provided*, That sales of gasoline and special fuel
218 shall be taxable;

219 (l) Sales and services, fire fighting or station house
220 equipment, including construction and automotive,
221 made to any volunteer fire department organized and
222 incorporated under the laws of the state of West
223 Virginia: *Provided*, That sales of gasoline and special
224 fuel shall be taxable;

225 (m) Sales of newspapers when delivered to consu-
226 mers by route carriers;

227 (n) Sales of drugs dispensed upon prescription and
228 sales of insulin to consumers for medical purposes;

229 (o) Sales of radio and television broadcasting time,

230 preprinted advertising circulars and newspaper and
231 outdoor advertising space for the advertisement of
232 goods or services;

233 (p) Sales and services performed by day-care centers;

234 (q) Casual and occasional sales of property or
235 services not conducted in a repeated manner or in the
236 ordinary course of repetitive and successive transac-
237 tions of like character by a corporation or organization
238 which is exempt from tax under subsection (f) of this
239 section on its purchases of tangible personal property
240 or services:

241 (1) For purposes of this subsection, the term "casual
242 and occasional sales not conducted in a repeated
243 manner or in the ordinary course of repetitive and
244 successive transactions of like character" means sales
245 of tangible personal property or services at fund
246 raisers sponsored by a corporation or organization
247 which is exempt, under subsection (f) of this section,
248 from payment of the tax imposed by this article on its
249 purchases, when such fund raisers are of limited
250 duration and are held no more than six times during
251 any twelve-month period and limited duration means
252 no more than eighty-four consecutive hours;

253 (2) The provisions of this subsection, as amended by
254 this article, shall apply to sales made after the thirtieth
255 day of June, one thousand nine hundred eighty-nine;

256 (r) Sales of property or services to a school which
257 has approval from the board of trustees of the univer-
258 sity system of West Virginia or the board of directors
259 of the state college system to award degrees, which has
260 its principal campus in this state, and which is exempt
261 from federal and state income taxes under Section
262 501(c)(3) of the Internal Revenue Code of 1986, as
263 amended: *Provided*, That sales of gasoline and special
264 fuel shall be taxable;

265 (s) Sales of mobile homes to be utilized by purchas-
266 ers as their principal year-round residence and dwell-
267 ing: *Provided*, That these mobile homes shall be
268 subject to tax at the three percent rate;

269 (t) Sales of lottery tickets and materials by licensed
270 lottery sales agents and lottery retailers authorized by
271 the state lottery commission, under the provisions of
272 article twenty-two, chapter twenty-nine of this code;

273 (u) Leases of motor vehicles titled pursuant to the
274 provisions of article three, chapter seventeen-a of this
275 code to lessees for a period of thirty or more consec-
276 utive days. This exemption shall apply to leases
277 executed on or after the first day of July, one thou-
278 sand nine hundred eighty-seven, and to payments
279 under long-term leases executed before such date, for
280 months thereof beginning on or after such date;

281 (v) Sales of propane to consumers for poultry house
282 heating purposes, with any seller to such consumer
283 who may have prior paid such tax in his price, to not
284 pass on the same to the consumer, but to make
285 application and receive refund of such tax from the
286 tax commissioner, pursuant to rules and regulations
287 which shall be promulgated by the tax commissioner;
288 and notwithstanding the provisions of section eighteen
289 of this article or any other provisions of such article to
290 the contrary;

291 (w) Any sales of tangible personal property or
292 services purchased after the thirtieth day of Septem-
293 ber, one thousand nine hundred eighty-seven, and
294 lawfully paid for with food stamps pursuant to the
295 federal food stamp program codified in 7 United States
296 Code, §2011, et seq., as amended, or with drafts issued
297 through the West Virginia special supplemental food
298 program for women, infants and children codified in
299 42 United States Code, §1786;

300 (x) Sales of tickets for activities sponsored by
301 elementary and secondary schools located within this
302 state;

303 (y) Sales of electronic data processing services and
304 related software: *Provided*, That for the purposes of
305 this subsection "electronic data processing services"
306 means: (1) The processing of another's data, including
307 all processes incident to processing of data such as
308 keypunching, keystroke verification, rearranging or

309 sorting of previously documented data for the purpose
310 of data entry or automatic processing and changing the
311 medium on which data is sorted, whether these
312 processes are done by the same person or several
313 persons; and (2) providing access to computer equip-
314 ment for the purpose of processing data or examining
315 or acquiring data stored in or accessible to such
316 computer equipment;

317 (z) Tuition charged for attending educational
318 summer camps;

319 (aa) Sales of building materials or building supplies
320 or other property to an organization qualified under
321 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
322 of 1986, as amended, which are to be installed in,
323 affixed to or incorporated by such organization or its
324 agent into real property, or into a building or structure
325 which is or will be used as permanent low-income
326 housing, transitional housing, emergency homeless
327 shelter, domestic violence shelter or emergency chil-
328 dren and youth shelter if such shelter is owned,
329 managed, developed or operated by an organization
330 qualified under Section 501(c)(3) or (c)(4) of the
331 Internal Revenue Code of 1986, as amended;

332 (bb) Dispensing of services performed by one corpo-
333 ration for another corporation when both corporations
334 are members of the same controlled group. Control
335 means ownership, directly or indirectly, of stock
336 possessing fifty percent or more of the total combined
337 voting power of all classes of the stock of a corporation
338 entitled to vote or ownership, directly or indirectly, of
339 stock possessing fifty percent or more of the value of
340 the corporation;

341 (cc) Food for the following shall be exempt:

342 (1) Food purchased or sold by public or private
343 schools, school sponsored student organizations or
344 school sponsored parent-teacher associations to stu-
345 dents enrolled in such school or to employees of such
346 school during normal school hours; but not those sales
347 of food made to the general public;

348 (2) Food purchased or sold by a public or private
349 college or university or by a student organization
350 officially recognized by such college or university to
351 students enrolled at such college or university when
352 such sales are made on a contract basis so that a fixed
353 price is paid for consumption of food products for a
354 specific period of time without respect to the amount
355 of food product actually consumed by the particular
356 individual contracting for the sale and no money is
357 paid at the time the food product is served or
358 consumed;

359 (3) Food purchased or sold by a charitable or private
360 nonprofit organization, a nonprofit organization or a
361 governmental agency under a program to provide food
362 to low-income persons at or below cost;

363 (4) Food sold in an occasional sale by a charitable or
364 nonprofit organization including volunteer fire depart-
365 ments and rescue squads, if the purpose of the sale is
366 to obtain revenue for the functions and activities of
367 the organization and the revenue so obtained is
368 actually expended for that purpose;

369 (5) Food sold by any religious organization at a social
370 or other gathering conducted by it or under its
371 auspices, if the purpose in selling the food is to obtain
372 revenue for the functions and activities of the organi-
373 zation and the revenue obtained from selling the food
374 is actually used in carrying on such functions and
375 activities: *Provided*, That purchases made by such
376 organizations shall not be exempt as a purchase for
377 resale;

378 (dd) Sales of food by little leagues, midget football
379 leagues, youth football or soccer leagues and similar
380 types of organizations, including scouting groups and
381 church youth groups, if the purpose in selling the food
382 is to obtain revenue for the functions and activities of
383 the organization and the revenues obtained from
384 selling the food is actually used in supporting or
385 carrying on functions and activities of the groups:
386 *Provided*, That such purchases made by such organi-
387 zations shall not be exempt as a purchase for resale;

388 (ee) Charges for room and meals by fraternities and
389 sororities to their members: *Provided*, That such
390 purchases made by a fraternity or sorority shall not be
391 exempt as a purchase for resale;

392 (ff) Sales of or charges for the transportation of
393 passengers in interstate commerce;

394 (gg) Sales of tangible personal property or services to
395 any person which this state is prohibited from taxing
396 under the laws of the United States or under the
397 constitution of this state;

398 (hh) Sales of tangible personal property or services
399 to any person who claims exemption from the tax
400 imposed by this article or article fifteen-a of this
401 chapter pursuant to the provisions of any other
402 chapter of this code;

403 (ii) Charges for the services of opening and closing
404 a burial lot;

405 (jj) Sales of livestock, poultry or other farm products
406 in their original state by the producer thereof or a
407 member of the producer's immediate family who is
408 not otherwise engaged in making retail sales of
409 tangible personal property; and sales of livestock sold
410 at public sales sponsored by breeder's or registry
411 associations or livestock auction markets: *Provided*,
412 That the exemptions allowed by this subsection shall
413 apply to sales made on or after the first day of July,
414 one thousand nine hundred ninety, and may be
415 claimed without presenting or obtaining exemption
416 certificates: *Provided, however*, That the farmer shall
417 maintain adequate records;

418 (kk) Sales of motion picture films to motion picture
419 exhibitors for exhibition if the sale of tickets or the
420 charge for admission to the exhibition of the film is
421 subject to the tax imposed by this article and sales of
422 coin-operated video arcade machines or video arcade
423 games to a person engaged in the business of providing
424 such machines to the public for a charge upon which
425 the tax imposed by this article is remitted to the tax
426 commissioner: *Provided*, That the exemption provided

427 in this subsection shall apply to sales made on or after
428 the first day of July, one thousand nine hundred
429 ninety, and may be claimed by presenting to the seller
430 a properly executed exemption certificate;

431 (ll) Sales of aircraft repair, remodeling and mainte-
432 nance services when such services are to an aircraft
433 operated by a certified or licensed carrier of persons or
434 property, or by a governmental entity, or to an engine
435 or other component part of an aircraft operated by a
436 certificated or licensed carrier of persons or property,
437 or by a governmental entity and sales of tangible
438 personal property that is permanently affixed or
439 permanently attached as a component part of an
440 aircraft owned or operated by a certificated or licensed
441 carrier of persons or property, or by a governmental
442 entity, as part of the repair, remodeling or mainte-
443 nance service and sales of machinery, tools, or equip-
444 ment, directly used or consumed exclusively in the
445 repair, remodeling, or maintenance of aircraft, aircraft
446 engines, or aircraft component parts, for a certificated
447 or licensed carrier of persons or property, or for a
448 governmental entity;

449 (mm) Sales of tangible personal property and servi-
450 ces to a person entitled to claim the tax credit for
451 investment in certain management information servi-
452 ces facilities allowed under section three-c, article
453 thirteen-d of this chapter, pursuant to the issuance of
454 a management information services tax credit certifi-
455 cation by the tax commissioner in accordance with
456 subsection (e) of said section, when such property or
457 services are directly used or consumed by the purchas-
458 er in the operation of the management information
459 services facility, as defined in section two of this
460 article for which credit is allowed under section three-
461 c, article thirteen-d of this chapter. Tangible personal
462 property, or services, directly used or consumed in the
463 operation of a management information services
464 facility includes only: (1) Computer processing and
465 telecommunications equipment; (2) data storage and
466 input/output devices; (3) disaster recovery services; (4)
467 supplies; (5) application, telecommunication and oper-

468 ating system software; (6) repair and maintenance of
469 any of the aforesaid items; and (7) other tangible
470 personal property or services directly used or con-
471 sumed in the operation of a management information
472 services facility: *Provided*, That the property is pur-
473 chased or leased after the thirty-first day of March,
474 one thousand nine hundred ninety-one. This exemp-
475 tion shall not apply to tangible personal property, or
476 services, that are not directly used or consumed in the
477 operation of a management information services
478 facility, or to gasoline or special fuel: *Provided*,
479 *however*, That nothing in this paragraph shall be
480 construed to limit, exclude or preclude the application
481 or availability of any other exemption set forth in this
482 section, or elsewhere in this code, which might
483 otherwise apply to any sale of tangible personal
484 property or services;

485 (nn) Charges for memberships or services provided
486 by health and fitness organizations relating to person-
487 alized fitness programs;

488 (oo) Sales of services by individuals who baby-sit for
489 a profit: *Provided*, That the gross receipts of the
490 individual from the performance of baby sitting
491 services does not exceed five thousand dollars in a
492 taxable year; and

493 (pp) A corporation or organization which is a not-
494 for-profit entity which charges membership dues
495 utilized for and contributing significantly to traffic and
496 pedestrian safety and education programs whether or
497 not the corporation or organization is exempt from
498 income tax under Section 501(c)(3) of the Internal
499 Revenue Code of 1986, as amended.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General*. — The West Virginia adjusted gross
2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-

5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.* — There shall be added to federal adjusted
8 gross income unless already included therein the
9 following items:

10 (1) Interest income on obligations of any state other
11 than this state or of a political subdivision of any such
12 other state unless created by compact or agreement to
13 which this state is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumen-
16 tality of the United States, which the laws of the
17 United States exempt from federal income tax but not
18 from state income taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in deter-
21 mining federal adjusted gross income and not credited
22 against federal income tax: *Provided*, That this modi-
23 fication shall not be made for taxable years beginning
24 after the thirty-first day of December, one thousand
25 nine hundred eighty-six;

26 (4) Interest on indebtedness incurred or continued to
27 purchase or carry obligations or securities the income
28 from which is exempt from tax under this article, to
29 the extent deductible in determining federal adjusted
30 gross income;

31 (5) Interest on a depository institution tax-exempt
32 savings certificate which is allowed as an exclusion
33 from federal gross income under Section 128 of the
34 Internal Revenue Code, for the federal taxable year;

35 (6) The amount allowed as a deduction from federal
36 gross income under Section 221 of the Internal Reve-
37 nue Code by married couples who file a joint federal
38 return for the federal taxable year: *Provided*, That this
39 modification shall not be made for taxable years
40 beginning after the thirty-first day of December, one
41 thousand nine hundred eighty-six;

42 (7) The deferral value of certain income that is not

43 recognized for federal tax purposes, which value shall
44 be an amount equal to a percentage of the amount
45 allowed as a deduction in determining federal adjusted
46 gross income pursuant to the accelerated cost recovery
47 system under Section 168 of the Internal Revenue
48 Code for the federal taxable year, with the percentage
49 of the federal deduction to be added as follows with
50 respect to the following recovery property: Three-year
51 property — no modification; five-year property — ten
52 percent; ten-year property — fifteen percent; fifteen-
53 year public utility property — twenty-five percent;
54 and fifteen-year real property — thirty-five percent:
55 *Provided*, That this modification shall not apply to any
56 person whose federal deduction is determined by the
57 use of the straight line method: *Provided, however*,
58 That this modification shall not be made for taxable
59 years beginning after the thirty-first day of December,
60 one thousand nine hundred eighty-six; and

61 (8) The amount of a lump sum distribution for
62 which the taxpayer has elected under Section 402(e) of
63 the Internal Revenue Code of 1986, as amended, to be
64 separately taxed for federal income tax purposes.

65 (c) *Modifications reducing federal adjusted gross*
66 *income.* — There shall be subtracted from federal
67 adjusted gross income to the extent included therein:

68 (1) Interest income on obligations of the United
69 States and its possessions to the extent includible in
70 gross income for federal income tax purposes;

71 (2) Interest or dividend income on obligations or
72 securities of any authority, commission or instrumen-
73 tality of the United States or of the state of West
74 Virginia to the extent includible in gross income for
75 federal income tax purposes but exempt from state
76 income taxes under the laws of the United States or of
77 the state of West Virginia, including federal interest or
78 dividends paid to shareholders of a regulated invest-
79 ment company, under Section 852 of the Internal
80 Revenue Code for taxable years ending after the
81 thirtieth day of June, one thousand nine hundred
82 eighty-seven;

83 (3) Any gain from the sale or other disposition of
84 property having a higher fair market value on the first
85 day of January, one thousand nine hundred sixty-one,
86 than the adjusted basis at said date for federal income
87 tax purposes: *Provided*, That the amount of this
88 adjustment is limited to that portion of any such gain
89 which does not exceed the difference between such
90 fair market value and such adjusted basis: *Provided*,
91 *however*, That if such gain is considered a long-term
92 capital gain for federal income tax purposes, the
93 modification shall be limited to forty percent of such
94 portion of the gain: *Provided further*, That this
95 modification shall not be made for taxable years
96 beginning after the thirty-first day of December, one
97 thousand nine hundred eighty-six;

98 (4) The amount of any refund or credit for overpay-
99 ment of income taxes imposed by this state, or any
100 other taxing jurisdiction, to the extent properly
101 included in gross income for federal income tax
102 purposes;

103 (5) Annuities, retirement allowances, returns of
104 contributions and any other benefit received under
105 the West Virginia public employees retirement system,
106 the West Virginia state teachers retirement system
107 and all forms of military retirement, including regular
108 armed forces, reserves and national guard, including
109 any survivorship annuities derived therefrom, to the
110 extent includible in gross income for federal income
111 tax purposes: *Provided*, That notwithstanding any
112 provisions in this code to the contrary this modifica-
113 tion shall be limited to the first two thousand dollars
114 of benefits received under the West Virginia public
115 employees retirement system, the West Virginia state
116 teachers retirement system and all forms of military
117 retirement including regular armed forces, reserves
118 and national guard, including any survivorship annui-
119 ties derived therefrom, to the extent includible in
120 gross income for federal income tax purposes for
121 taxable years beginning after the thirty-first day of
122 December, one thousand nine hundred eighty-six; and
123 the first two thousand dollars of benefits received

124 under any federal retirement system to which Title 4
125 U.S.C. §111 applies: *Provided, however,* That the total
126 modification under this paragraph shall not exceed
127 two thousand dollars per person receiving such retire-
128 ment benefits and this limitation shall apply to all
129 returns or amended returns filed after the last day of
130 December, one thousand nine hundred eighty-eight;

131 (6) Retirement income received in the form of
132 pensions and annuities after the thirty-first day of
133 December, one thousand nine hundred seventy-nine,
134 under any West Virginia police, West Virginia fire-
135 men's retirement system or the West Virginia depart-
136 ment of public safety death, disability and retirement
137 fund, including any survivorship annuities derived
138 therefrom, to the extent includible in gross income for
139 federal income tax purposes;

140 (7) Federal adjusted gross income in the amount of
141 eight thousand dollars received from any source after
142 the thirty-first day of December, one thousand nine
143 hundred eighty-six, by any person who has attained
144 the age of sixty-five on or before the last day of the
145 taxable year, or by any person certified by proper
146 authority as permanently and totally disabled, regard-
147 less of age, on or before the last day of the taxable
148 year, to the extent includible in federal adjusted gross
149 income for federal tax purposes: *Provided,* That if a
150 person has a medical certification from a prior year
151 and he is still permanently and totally disabled, a copy
152 of the original certificate is acceptable as proof of
153 disability. A copy of the form filed for the federal
154 disability income tax exclusion is acceptable: *Provided,*
155 *however,* That:

156 (i) Where the total modification under subdivisions
157 (1), (2), (5) and (6) of this subsection is eight thousand
158 dollars per person or more, no deduction shall be
159 allowed under this subdivision; and

160 (ii) Where the total modification under subdivisions
161 (1), (2), (5) and (6) of this subsection is less than eight
162 thousand dollars per person, the total modification
163 allowed under this subdivision for all gross income

164 received by such person shall be limited to the
165 difference between eight thousand dollars and the sum
166 of modifications under such subdivisions;

167 (8) Federal adjusted gross income in the amount of
168 eight thousand dollars received from any source after
169 the thirty-first day of December, one thousand nine
170 hundred eighty-six, by the surviving spouse of any
171 person who had attained the age of sixty-five or who
172 had been certified as permanently and totally disabled,
173 to the extent includible in federal adjusted gross
174 income for federal tax purposes: *Provided, That:*

175 (i) Where the total modification under subdivisions
176 (1), (2), (5), (6) and (7) of this subsection is eight
177 thousand dollars or more, no deduction shall be
178 allowed under this subdivision; and

179 (ii) Where the total modification under subdivisions
180 (1), (2), (5), (6) and (7) of this subsection is less than
181 eight thousand dollars per person, the total modifica-
182 tion allowed under this subdivision for all gross
183 income received by such person shall be limited to the
184 difference between eight thousand dollars and the sum
185 of such subdivisions;

186 (9) Any pay or allowances received, after the thirty-
187 first day of December, one thousand nine hundred
188 seventy-nine, by West Virginia residents who have not
189 attained the age of sixty-five, as compensation for
190 active service in the armed forces of the United States:
191 *Provided, That* such deduction shall be limited to an
192 amount not to exceed four thousand dollars: *Provided,*
193 *however,* That this modification shall not be made for
194 taxable years beginning after the thirty-first day of
195 December, one thousand nine hundred eighty-six;

196 (10) Gross income to the extent included in federal
197 adjusted gross income under Section 86 of the Internal
198 Revenue Code for federal income tax purposes: *Pro-*
199 *vided,* That this modification shall not be made for
200 taxable years beginning after the thirty-first day of
201 December, one thousand nine hundred eighty-six;

202 (11) The amount of any lottery prize awarded by the

203 West Virginia state lottery commission, to the extent
 204 properly included in gross income for federal income
 205 tax purposes: *Provided*, That for taxable years begin-
 206 ning after the thirty-first day of December, one
 207 thousand nine hundred ninety-two, this modification
 208 shall not be made for lottery prizes awarded by the
 209 West Virginia state lottery commission.

210 (12) Any other income which this state is prohibited
 211 from taxing under the laws of the United States.

212 (d) *Modification for West Virginia fiduciary adjust-*
 213 *ment.* — There shall be added to or subtracted from
 214 federal adjusted gross income, as the case may be, the
 215 taxpayer's share, as beneficiary of an estate or trust, of
 216 the West Virginia fiduciary adjustment determined
 217 under section nineteen of this article.

218 (e) *Partners and S corporation shareholders.* — The
 219 amounts of modifications required to be made under
 220 this section by a partner or an S corporation share-
 221 holder, which relate to items of income, gain, loss or
 222 deduction of a partnership or an S corporation, shall
 223 be determined under section seventeen of this article.

224 (f) *Husband and wife.* — If husband and wife
 225 determine their federal income tax on a joint return
 226 but determine their West Virginia income taxes
 227 separately, they shall determine their West Virginia
 228 adjusted gross incomes separately as if their federal
 229 adjusted gross incomes had been determined
 230 separately.

**§11-21-77. Extension of withholding to certain lottery
 winnings.**

1 (a) *Lottery winnings subject to withholding.* —
 2 Proceeds of more than five thousand dollars from any
 3 lottery prize awarded by the West Virginia state
 4 lottery commission shall be subject to withholding.
 5 The West Virginia state lottery commission in making
 6 any payment of a lottery prize subject to withholding
 7 shall deduct and withhold from such payment a tax in
 8 an amount equal to six and one-half percent of such
 9 payment.

10 (b) *Statement by recipient.* — Every person who is
11 to receive payment of winning which are subject to
12 withholding shall furnish the person making such
13 payment a statement made under the penalties of
14 perjury, containing the name, address and taxpayer
15 identification number of the person receiving the
16 payment and each person entitled to any portion of
17 such payment.

18 (c) *Coordination with other sections.* — For the
19 purposes of determining liability for payment of taxes
20 and filing of returns, payments of winnings which are
21 subject to withholding shall be treated as if they were
22 wages paid by an employer to an employee.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-9. Annual returns.

1 (a) *In general.* — Every person subject to the tax
2 imposed by this article shall make and file an annual
3 return for the taxable year with the tax commissioner
4 on or before:

5 (1) The fifteenth day of the third month of the next
6 succeeding taxable year if the person is a corporation;
7 or

8 (2) The fifteenth day of the fourth month of the next
9 succeeding taxable year if the person is a partnership.

10 The annual return shall include such information as
11 the tax commissioner may require for determining the
12 amount of taxes due under this article for the taxable
13 year.

14 (b) *Special rule for tax exempt organizations with*
15 *unrelated business taxable income.* — Notwithstanding
16 the provisions of subsection (a), when a business
17 franchise tax return is required from an organization
18 generally exempt from tax under subsection (b),
19 section seven of this article, which has unrelated
20 business taxable income, the annual return shall be
21 filed on or before the fifteenth day of the fifth month
22 following the close of the taxable year.

23 (c) *Consolidated returns.* — Any corporation that

24 files as part of an affiliated group for purposes of the
25 tax imposed by article twenty-four of this chapter
26 shall file a consolidated return under this article.

27 (d) The tax commissioner may, at his or her discre-
28 tion, require an affiliated group of corporations to file
29 a consolidated tax return under this article in order to
30 accurately determine the taxes due under this article.

31 (e) *Effective date.* — The amendments to this section
32 made in the year one thousand nine hundred ninety-
33 three shall apply to tax returns that become due after
34 the first day of that year.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General.* — In determining West Virginia taxable
2 income of a corporation, its taxable income as defined
3 for federal income tax purposes shall be adjusted and
4 determined before the apportionment provided by
5 section seven of this article, by the items specified in
6 this section.

7 (b) *Adjustments increasing federal taxable income.*
8 — There shall be added to federal taxable income,
9 unless already included in the computation of federal
10 taxable income, the following items:

11 (1) Interest or dividends on obligations or securities
12 of any state or of a political subdivision or authority
13 thereof;

14 (2) Interest or dividends (less related expenses to the
15 extent not deducted in determining federal taxable
16 income) on obligations or securities of any authority,
17 commission or instrumentality of the United States
18 which the laws of the United States exempt from
19 federal income tax but not from state income taxes;

20 (3) Income taxes and other taxes, including franchise
21 and excise taxes, which are based on, measured by, or
22 computed with reference to net income, imposed by
23 this state or any other taxing jurisdiction, to the extent
24 deducted in determining federal taxable income;

25 (4) The amount of unrelated business taxable income
26 as defined by Section 512 of the Internal Revenue
27 Code of 1986, as amended, of a corporation which by
28 reason of its purposes is generally exempt from federal
29 income taxes; and

30 (5) The amount of any net operating loss deduction
31 taken for federal income tax purposes under Section
32 172 of the Internal Revenue Code of 1986, as amended.

33 (c) *Adjustments decreasing federal taxable income.*
34 — There shall be subtracted from federal taxable
35 income to the extent included therein:

36 (1) Any gain from the sale or other disposition of
37 property having a higher fair market value on the first
38 day of July, one thousand nine hundred sixty-seven,
39 than the adjusted basis at said date for federal income
40 tax purposes: *Provided*, That the amount of this
41 adjustment is limited to that portion of any such gain
42 which does not exceed the difference between such
43 fair market value and such adjusted basis;

44 (2) The amount of any refund or credit for overpay-
45 ment of income taxes and other taxes, including
46 franchise and excise taxes, which are based on,
47 measured by, or computed with reference to net
48 income, imposed by this state or any other taxing
49 jurisdiction, to the extent properly included in gross
50 income for federal income tax purposes;

51 (3) The amount added to federal taxable income due
52 to the elimination of the reserve method for computa-
53 tion of the bad debt deduction;

54 (4) The full amount of interest expense actually
55 disallowed in determining federal taxable income
56 which was incurred or continued to purchase or carry
57 obligations or securities of any state or of any political
58 subdivision thereof;

59 (5) The amount required to be added to federal
60 taxable income as a dividend received from a foreign
61 (non-United States) corporation under Section 78 of
62 the Internal Revenue Code of 1986, as amended, by a
63 corporation electing to take the foreign tax credit for

64 federal income tax purposes;

65 (6) The amount of salary expenses disallowed as a
66 deduction for federal income tax purposes due to
67 claiming the federal jobs credit under Section 51 of the
68 Internal Revenue Code of 1986, as amended;

69 (7) The amount included in federal adjusted gross
70 income by the operation of Section 951 of the Internal
71 Revenue Code of 1986, as amended; and

72 (8) Any amount included in federal adjusted gross
73 income which is foreign source income. Foreign source
74 income includes:

75 (A) Interest and dividends, other than those derived
76 from sources within the United States;

77 (B) Rents, royalties, license, and technical fees from
78 property located or services performed without the
79 United States or from any interest in such property,
80 including rents, royalties, or fees for the use of or the
81 privilege of using without the United States any
82 patents, copyrights, secret process and formulas, good
83 will, trademarks, trade brands, franchises and other
84 like properties; and

85 (C) Gains, profits, or other income from the sale of
86 intangible or real property located without the United
87 States.

88 In determining the source of "foreign source
89 income", the provisions of Sections 861, 862 and 863 of
90 the Internal Revenue Code of 1986, as amended, shall
91 be applied.

92 (d) *Net operating loss deduction.* — Except as other-
93 wise provided in this subsection, there shall be allowed
94 as a deduction for the taxable year an amount equal
95 to the aggregate of: (1) The West Virginia net operat-
96 ing loss carryovers to such year; plus (2) the net
97 operating loss carrybacks to such year: *Provided*, That
98 no more than three hundred thousand dollars of net
99 operating loss from any taxable year beginning after
100 the thirty-first day of December, one thousand nine
101 hundred ninety-two, may be carried back to any

102 previous taxable year. For purposes of this subsection,
103 the term "West Virginia net operating loss deduction"
104 means the deduction allowed by this subsection,
105 determined in accordance with Section 172 of the
106 Internal Revenue Code of 1986, as amended.

107 (1) *Special rules.* —

108 (A) When the corporation further adjusts its adjust-
109 ed federal taxable income under section seven of this
110 article, the West Virginia net operating loss deduction
111 allowed by this subsection shall be deducted after the
112 section seven adjustments are made;

113 (B) The tax commissioner shall prescribe such
114 transition regulations as he deems necessary for fair
115 and equitable administration of this subsection as
116 amended by this act.

117 (2) *Effective date.* — The provisions of this subsec-
118 tion, as amended by chapter one hundred nineteen,
119 acts of the Legislature, one thousand nine hundred
120 eighty-eight, shall apply to all taxable years ending
121 after the thirtieth of June, one thousand nine hundred
122 eighty-eight; and to all loss carryovers from taxable
123 years ending on or before said thirtieth day of June.

124 (e) *Special adjustments for expenditures for water*
125 *and air pollution control facilities.* —

126 (1) If the taxpayer so elects under subdivision (2) of
127 this subsection, there shall be:

128 (A) Subtracted from federal taxable income the total
129 of the amounts paid or incurred during the taxable
130 year for the acquisition, construction or development
131 within this state of water pollution control facilities or
132 air pollution control facilities as defined in Section 169
133 of the Internal Revenue Code; and

134 (B) Added to federal taxable income the total of the
135 amounts of any allowances for depreciation and
136 amortization of such water pollution control facilities
137 or air pollution control facilities, as so defined, to the
138 extent deductible in determining federal taxable
139 income.

140 (2) The election referred to in subdivision (1) of this
141 subsection shall be made in the return filed within the
142 time prescribed by law (including extensions thereof)
143 for the taxable year in which such amounts were paid
144 or incurred. Such election shall be made in such
145 manner, and the scope of application of such election
146 shall be defined, as the tax commissioner may by
147 regulations prescribe, and shall be irrevocable when
148 made as to all amounts paid or incurred for any
149 particular water pollution control facility or air
150 pollution control facility.

151 (3) Notwithstanding any other provisions of this
152 subsection or of section seven to the contrary, if the
153 taxpayer's federal taxable income is subject to alloca-
154 tion and apportionment under section seven, the
155 adjustments prescribed in paragraphs (A) and (B),
156 subdivision (1) of this subsection shall (instead of being
157 made to the taxpayer's federal taxable income before
158 allocation and apportionment thereof as provided in
159 section seven) be made to the portion of the taxpayer's
160 net income, computed without regard to such adjust-
161 ments, allocated and apportioned to this state in
162 accordance with section seven.

163 (f) *Allowance for certain government obligations and*
164 *obligations secured by residential property.* — The
165 West Virginia taxable income of a taxpayer subject to
166 this article as adjusted in accordance with subsections
167 (b), (c), (d) and (e) of this section shall be further
168 adjusted by multiplying such taxable income after
169 such adjustment by said subsections by a fraction
170 equal to one minus a fraction:

171 (1) The numerator of which is the sum of the
172 average of the monthly beginning and ending account
173 balances during the taxable year (account balances to
174 be determined at cost in the same manner that such
175 obligations, investments and loans are reported on
176 Schedule L of the Federal Form 1120) of the following:

177 (A) Obligations or securities of the United States, or
178 of any agency, authority, commission or instrumentality
179 of the United States and any other corporation or

180 entity created under the authority of the United States
181 Congress for the purpose of implementing or further-
182 ing an objective of national policy;

183 (B) Obligations or securities of this state and any
184 political subdivision or authority thereof;

185 (C) Investments or loans primarily secured by
186 mortgages, or deeds of trust, on residential property
187 located in this state and occupied by nontransients;
188 and

189 (D) Loans primarily secured by a lien or security
190 agreement on residential property in the form of a
191 mobile home, modular home or double-wide, located
192 in this state and occupied by nontransients.

193 (2) The denominator of which is the average of the
194 monthly beginning and ending account balances of the
195 total assets of the taxpayer which are shown on
196 Schedule L of Federal Form 1120, which are filed by
197 the taxpayer with the Internal Revenue Service.

§11-24-13. Returns; time for filing.

1 (a) On or before the fifteenth day of the third month
2 following the close of a taxable year, an income tax
3 return under this article shall be made and filed by or
4 for every corporation subject to the tax imposed by
5 this article.

6 (b) *Special rule for tax exempt corporations with*
7 *unrelated business taxable income.* — Notwithstanding
8 the provisions of subsection (a) of this section, when
9 an income tax return is required from a corporation
10 generally exempt from tax under subsection (a),
11 section five of this article, which has unrelated
12 business taxable income, the annual return shall be
13 filed on or before the fifteenth day of the fifth month
14 following the close of the taxable year.

15 (c) The tax commissioner may combine into one
16 form the annual return due under this article and the
17 annual return due under article twenty-three of this
18 chapter. When a combined business franchise tax and
19 corporation net income tax annual return is filed by a

20 taxpayer, the amount of tax remitted shall be applied
21 first against any business franchise tax that may be
22 due for the taxable year under said article and then
23 against any corporation net income tax that may be
24 due for the taxable year. The tax commissioner may
25 also combine the forms for filing declarations of
26 estimated tax and the forms for making installment
27 payments of estimated tax.

28 (d) *Effective date.* — The amendments to this section
29 made in the year one thousand nine hundred ninety-
30 three shall apply to tax returns that become due after
31 the first day of that year.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-6. Preemption.

1 Except as otherwise provided in this article, no state
2 agency, county, municipality or political subdivision or
3 agency of this state may impose any law, regulation,
4 rule or requirement of any sort relating to the use,
5 sale or distribution of tobacco products which is more
6 restrictive than the provisions of this article: *Provided,*
7 That any law, regulation, rule or requirement duly
8 enacted and in effect on the first day of January, one
9 thousand nine hundred ninety-three, shall remain in
10 effect and enforceable, but may not be amended to
11 make it more restrictive than it was on the first day
12 of January, one thousand nine hundred ninety-three.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 20. CHARITABLE BINGO.

§47-20-4. Annual license; conditions on holding of games.

1 A charitable or public service organization or any of
2 its auxiliaries or other organizations otherwise affiliat-
3 ed with it may apply for an annual license. Only one
4 license per year in the aggregate may be granted to a
5 charitable or public service organization and all of its
6 auxiliaries or other associations or organizations
7 otherwise affiliated with it: *Provided,* That for pur-
8 poses of this section the various branches, chapters or

9 lodges of any national association or organization or
10 local churches of a nationally organized church are not
11 considered affiliates or auxiliaries of each other. The
12 commissioner shall by regulation provide for the
13 manner for determining to which organization, wheth-
14 er the parent organization, an affiliate or an auxiliary,
15 the one license allowed under this section is granted.
16 An annual license is valid for one year from the date
17 of issuance and entitles only the licensee to hold no
18 more than two bingo occasions per week. No two or
19 more organizations may hold a joint bingo occasion
20 under any annual licenses. No bingo occasion held
21 pursuant to an annual license may exceed six hours
22 duration.

23 A licensee shall display its annual bingo license
24 conspicuously at the location where the bingo occasion
25 is held.

26 All bingo occasions shall be open to the general
27 public: *Provided*, That no licensee shall permit or
28 allow any individual under the age of eighteen to
29 participate in the playing of any bingo game with
30 knowledge or reason to believe that the individual is
31 under the age of eighteen: *Provided, however*, That an
32 individual under the age of eighteen may attend the
33 playing of a bingo game when accompanied by and
34 under the supervision of an adult relative or a legal
35 guardian of said individual.

**§47-20-5. Limited occasion license; conditions on holding of
games.**

1 A limited occasion license is valid only for the time
2 period specified in the application and entitles only the
3 licensee to hold a bingo occasion once every twenty-
4 four hours for a time period not to exceed two weeks.
5 Two or more organizations may hold a joint bingo
6 occasion provided each participating organization has
7 been granted a limited occasion bingo license for such
8 jointly held occasion. No bingo occasion held pursuant
9 to a limited occasion license may exceed twelve hours
10 in duration. Each charitable or public service organi-
11 zation which desires to hold bingo occasions pursuant

12 to this section, or any of its auxiliaries or other
13 organizations otherwise affiliated with it shall obtain a
14 limited occasion license notwithstanding the fact that
15 it holds a valid annual license: *Provided*, That no
16 licensee which holds an annual license may obtain
17 more than one limited occasion license.

18 Only three limited occasion licenses per year in the
19 aggregate may be granted to a charitable or public
20 service organization and all of its auxiliaries or other
21 associations or organizations otherwise affiliated with
22 it, none of which hold an annual license. For purposes
23 of this section the various branches, chapters or lodges
24 of any national association or organization or local
25 churches of a nationally organized church are not
26 considered affiliates or auxiliaries of each other. The
27 commissioner shall by regulation provide the manner
28 for determining to which organization, whether the
29 parent organization, an affiliate or an auxiliary, the
30 three licenses allowed under this section are granted.

31 A licensee shall display its limited occasion license
32 conspicuously at the location where the bingo occasion
33 is held.

34 All bingo occasions shall be open to the general
35 public: *Provided*, That no licensee shall permit or
36 allow any individual under the age of eighteen to
37 participate in the playing of any bingo game with
38 knowledge or reason to believe that the individual is
39 under the age of eighteen: *Provided, however*, That an
40 individual under the age of eighteen may attend the
41 playing of a bingo game when accompanied by and
42 under the supervision of an adult relative or a legal
43 guardian of said individual.

§47-20-6. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the tax commission-
2 er for annual licenses in the amount of five hundred
3 dollars, except that for volunteer or nonprofit groups
4 who gross less than twenty thousand dollars the fee
5 shall be two hundred dollars and for bona fide senior
6 citizen organizations the fee is fifty dollars. A license
7 fee shall be paid to the tax commissioner for a limited

8 occasion license in the amount of one hundred dollars.
9 A license fee of five hundred dollars shall be paid to
10 the tax commissioner for a state fair license as
11 provided in section twenty-two of this article. All
12 revenue from said license fee shall be deposited in the
13 special revenue account established under the author-
14 ity of section two-a, article nine, chapter eleven of this
15 code and used to support the investigatory activities
16 provided for in said section. The license fee imposed
17 by this section is in lieu of all other license or
18 franchise taxes or fees of this state and no county or
19 municipality or other political subdivision of this state
20 is empowered to impose a license or franchise tax or
21 fee.

22 (b) The gross proceeds derived from the conduct of
23 a bingo occasion are exempt from state and local
24 business and occupation taxes, income taxes, excise
25 taxes and all special taxes. The licensee is exempt
26 from payment of consumers sales and service taxes
27 and use taxes on all purchases for use or consumption
28 in the conduct of a bingo occasion and is exempt from
29 collecting consumers sales taxes on any admission fees
30 and sales of bingo cards: *Provided*, That the exemption
31 provided in this subsection does not apply to state fair
32 bingo proceeds.

§47-20-6a. Super bingo license.

1 Any charitable or public service organization may,
2 upon payment of a five thousand dollar license fee,
3 apply to the tax commissioner for issuance of an
4 annual super bingo license. All revenue from said
5 license fee shall be deposited in the special revenue
6 account established under the authority of section two-
7 a, article nine, chapter eleven of this code and use to
8 support the investigatory activities provided for in said
9 section. The tax commissioner shall promulgate rules
10 in accordance with article three, chapter twenty-nine-
11 a of this code specifying those organizations which
12 qualify as charitable or public service organizations.

13 A holder of a super bingo license may conduct one
14 super bingo occasion each month during the period of

15 the license at which up to thirty thousand dollars in
16 prizes may be awarded, notwithstanding the seven
17 thousand five hundred dollar limitation on prizes
18 specified in section ten of this article.

19 A charitable or public service organization that has
20 a regular or limited occasion bingo license may apply
21 for a super bingo license.

§47-20-12. Compensation.

1 Except as provided otherwise in sections twelve-a,
2 thirteen and twenty-two of this article, no individual
3 who participates in any manner in the conduct of a
4 bingo occasion or the operation of a concession in
5 conjunction with a bingo occasion may receive or
6 accept any commission, wage, salary, reward, tip,
7 donation, gratuity or other form of compensation or
8 remuneration whether directly or indirectly, regard-
9 less of the source, for his work, labor or services.

§47-20-12a. Compensation of bingo operator.

1 (a) Within the guidelines set forth in subsections (b),
2 (c) and (d) of this section, a licensee may pay a salary,
3 not to exceed the federal minimum wage, to operators
4 of bingo games who are active members of the licen-
5 see organization.

6 (b) If the licensee's gross receipts from bingo occa-
7 sions equal or exceed one hundred thousand dollars
8 for the licensee's most recently filed annual financial
9 report, a salary may be paid to not more than three
10 operators.

11 (c) If the licensee's gross receipts from bingo occa-
12 sions are less than one hundred thousand dollars, but
13 equal or exceed fifty thousand dollars for the licen-
14 see's most recently filed annual financial report, a
15 salary may be paid to not more than two operators.

16 (d) If the licensee's gross receipts from bingo occa-
17 sions are less than fifty thousand dollars for the
18 licensee's most recently filed annual financial report,
19 a salary may be paid to no more than one operator.

**§47-20-15. Payment of reasonable expenses from proceeds;
net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of bingo
3 occasions, not to exceed fifteen percent of the gross
4 proceeds collected during a license period, may be paid
5 out of the gross proceeds of the conduct of bingo,
6 including, but not limited to:

7 (1) Rent paid for the use of the premises: *Provided*,
8 That a copy of the rental agreement was filed with the
9 bingo license application and any changes thereto
10 were filed within ten days of being made;

11 (2) The cost of custodial services;

12 (3) The cost to the licensee organization for equip-
13 ment and supplies used to conduct the bingo occasion;

14 (4) The cost to the licensee organization for advertis-
15 ing the bingo occasion;

16 (5) The cost of hiring security personnel, licensed
17 pursuant to the provisions of article eighteen, chapter
18 thirty of this code; and

19 (6) The cost of providing child care services to the
20 bingo patrons: *Provided*, That any proceeds received
21 from the provision of child care services shall be
22 handled the same as bingo proceeds.

23 (b) The actual cost to the licensee for prizes, not to
24 exceed the amounts as specified in section ten of this
25 article, may be paid out of the gross proceeds of the
26 conduct of bingo.

27 (c) The cost of any refreshments, souvenirs or any
28 other item sold or otherwise provided through any
29 concession to the patrons may not be paid for out of
30 the gross proceeds from the bingo occasion. The
31 licensee shall expend all net bingo proceeds and any
32 interest earned thereon for the charitable or public
33 service purposes stated in the application within one
34 year after the expiration of the license under which
35 the bingo occasions were conducted. A licensee which
36 does not qualify as a qualified recipient organization
37 may apply to the commissioner at the time it applies

38 for a bingo license or as provided in subsection (e) of
39 this section for permission to apply any or all of its net
40 proceeds to directly support a charitable or public
41 service activity or endeavor which it sponsors.

42 (d) No gross proceeds from any bingo operation may
43 be devoted or in any manner used by any licensee or
44 qualified recipient organization for the construction,
45 acquisition, improvement, maintenance or repair of
46 real or personal property except that which is used
47 exclusively for one or more charitable or public
48 service purposes or as provided in subdivision (3),
49 subsection (a) of this section.

50 (e) Any licensee which, in good faith, finds itself
51 unable to comply with the requirements of this
52 provision shall apply to the commissioner for permis-
53 sion to expend its net proceeds for one or more
54 charitable or public service purposes other than that
55 stated in its license application or for permission to
56 expend its net proceeds later than the one-year time
57 period specified in this section. The application shall
58 be on a form furnished by the commissioner and shall
59 include the particulars of the requested changes and
60 the reasons for the changes. The application shall be
61 filed no later than sixty days before the end of the
62 one-year period specified in this section. In the case of
63 an application to extend the time in which the net
64 proceeds are to be expended for a charitable or public
65 service purpose, the licensee shall file such periodic
66 reports with the commissioner as the commissioner
67 directs until the proceeds are so expended.

§47-20-16. Records; commissioner audit.

1 Any licensee which holds a bingo occasion as provid-
2 ed by this article shall maintain a separate checking
3 account and separate bookkeeping procedure for its
4 bingo operations. Money for expenses shall be with-
5 drawn only by checks having preprinted consecutive
6 numbers and made payable to a specific person, firm
7 or corporation and at no time shall a check be made
8 payable to cash. A licensee shall maintain all records
9 required by this article for at least three years and the

10 records shall be open to the commissioner for reason-
11 able inspection. Whenever the tax commissioner has
12 reasonable cause to believe a licensee has violated any
13 of the provisions of this article, he or she may perform
14 or cause to be performed an audit of the licensee's
15 books and records: *Provided*, That the tax commission-
16 er shall perform or cause to be performed an audit of
17 the books and records of any licensee that has awarded
18 total prizes in excess of one hundred seventy-five
19 thousand dollars. The tax commissioner shall file a
20 copy of the completed audit with the county commis-
21 sion of the county wherein the licensee holds bingo
22 occasions.

§47-20-24. Filing of reports.

1 Each licensee holding an annual license shall file
2 with the tax commissioner quarterly and an annual
3 financial report summarizing its bingo operations for
4 the time period covered by the report. Each quarterly
5 report shall be filed within twenty days after the end
6 of the quarter which it covers. The annual report shall
7 be filed within thirty days after the expiration of the
8 license under which the operations covered by the
9 report were held.

10 Each licensee holding a limited occasion license or
11 state fair license shall file with the tax commissioner
12 a financial report summarizing its bingo operations for
13 the license period within thirty days after the expira-
14 tion of the license under which the operations covered
15 by the report are held. The report shall contain the
16 name, address and social security number of any
17 individual who receives during the course of a bingo
18 occasion prizes the aggregate value of which exceeds
19 one hundred dollars, and other information required
20 by the commissioner: *Provided*, That any licensee
21 failing to file such report when due shall be liable for
22 a penalty of twenty-five dollars for each month or
23 fraction thereof during which the failure continues,
24 such penalty not to exceed one hundred dollars:
25 *Provided, however*, That annual financial reports for
26 license years ending after the first day of July, one
27 thousand nine hundred ninety-three, must be audited

28 financial reports as defined by the American institute
29 of certified public accountants if a licensee's gross
30 receipts exceed one hundred thousand dollars: *Provid-*
31 *ed further,* That annual financial reports for license
32 years ending after the first day of July, one thousand
33 nine hundred ninety-three, must contain a compila-
34 tion and review of such financial report, as defined by
35 the American institute of certified public accountants,
36 if a licensee's gross receipts exceed fifty thousand
37 dollars but are less than one hundred thousand dollars.

§47-20-28a. Certain operators of bingo games to provide for smoking and nonsmoking sections.

1 Any bingo operator who distributes more than one
2 hundred bingo cards or bingo sheets at any bingo
3 occasion shall provide a smoking and nonsmoking
4 section, if smoking is permitted.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-7. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the tax commission-
2 er for annual licenses in the amount of five hundred
3 dollars. A license fee shall be paid to the tax commis-
4 sioner for a limited occasion license in the amount of
5 fifty dollars. All revenue from said license fee shall be
6 deposited in the special revenue account established
7 under the authority of section two-a, article nine,
8 chapter eleven of this code and used to support the
9 investigatory activities provided for in said section.
10 The license fee imposed by this section is in lieu of all
11 other license or franchise taxes or fees of this state and
12 no county or municipality or other political subdivi-
13 sion of this state is empowered to impose a license or
14 franchise tax or fee on any raffle or raffle occasion.

15 (b) The gross proceeds derived from the conduct of
16 a raffle occasion are exempt from state and local
17 business and occupation taxes, income taxes, excise
18 taxes and all special taxes. Any charitable or public
19 service organization conducting a raffle occasion
20 pursuant to the provisions of this article is exempt
21 from payment of consumers sales and service taxes,

22 use taxes and all other taxes on all purchases for use
23 or consumption in the conduct of a raffle occasion and
24 is exempt from collecting consumers sales taxes on
25 any admission fees and sales of raffle tickets.

**§47-21-15. Payment of reasonable expenses from proceeds;
net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of raffle
3 occasions, not to exceed fifteen percent of the gross
4 proceeds collected during a license period, may be paid
5 out of the gross proceeds of the conduct of raffle,
6 including, but not limited to:

7 (1) Rent paid for the use of the premises: *Provided*,
8 That a copy of the rental agreement was filed with the
9 raffle license application with any modifications
10 thereto to be filed within ten days of being made;

11 (2) The cost of custodial services;

12 (3) The cost to the licensee organization for equip-
13 ment and supplies used to conduct the raffle occasion;

14 (4) The cost to the licensee organization for advertis-
15 ing the raffle occasion;

16 (5) The cost of hiring security personnel, licensed
17 pursuant to the provisions of article eighteen, chapter
18 thirty of this code; and

19 (6) The cost of providing child care services to the
20 bingo patrons: *Provided*, That any proceeds received
21 from the provision of child care services shall be
22 handled the same as bingo proceeds.

23 (b) The actual cost to the licensee for prizes, not to
24 exceed the amounts as specified in section eleven of
25 this article, may be paid out of the gross proceeds of
26 the conduct of raffle.

27 (c) The cost of any refreshments, souvenirs or any
28 other item sold or otherwise provided through any
29 concession to the patrons may not be paid for out of
30 the gross proceeds from the raffle occasion. The
31 licensee shall expend all net raffle proceeds and any

32 interest earned thereon for the charitable or public
33 service purposes stated in the application within one
34 year after the expiration of the license under which
35 the raffle occasions were conducted. A licensee which
36 does not qualify as a qualified recipient organization
37 may apply to the commissioner at the time it applies
38 for a raffle license or as provided in subsection (e) of
39 this section for permission to apply any or all of its net
40 proceeds to directly support a charitable or public
41 service activity or endeavor which it sponsors.

42 (d) No gross proceeds from any raffle operation may
43 be devoted or in any manner used by any licensee or
44 qualified recipient organization for the construction,
45 acquisition, improvement, maintenance or repair of
46 real or personal property except that which is used
47 exclusively for one or more charitable or public
48 service purposes or as provided in subdivision (3),
49 subsection (a) of this section.

50 (e) Any licensee which, in good faith, finds itself
51 unable to comply with the requirements of the forego-
52 ing provisions of this section shall apply to the com-
53 missioner for permission to expend its net proceeds for
54 one or more charitable or public service purposes
55 other than that stated in its license application or for
56 permission to expend its net proceeds later than the
57 one-year time period specified in this section. The
58 application shall be on a form furnished by the
59 commissioner and shall include the particulars of the
60 requested changes and the reasons for the changes.
61 The application shall be filed no later than sixty days
62 before the end of the one-year period specified in this
63 section. In the case of an application to extend the
64 time in which the net proceeds are to be expended for
65 a charitable or public service purpose, the licensee
66 shall file such periodic reports with the commissioner
67 as the commissioner directs until the proceeds are so
68 expended.

§47-21-22. Filing of reports.

1 Each licensee holding an annual, limited or state fair
2 license shall file with the commissioner a financial

3 report summarizing its raffle operations within thirty
4 days after the expiration date of such license.

5 The reports required by this section shall contain
6 the name, address and social security number of any
7 individual who received during the course of a raffle
8 occasion prizes the aggregate value of which exceeded
9 one hundred dollars, and other information required
10 by the commissioner: *Provided*, That any licensee
11 failing to file such report when due shall be liable for
12 a penalty of twenty-five dollars for each month or
13 fraction thereof during which the failure continues,
14 such penalty not to exceed one hundred dollars:
15 *Provided, however*, That annual financial reports for
16 license years ending after the first day of July, one
17 thousand nine hundred ninety-three, must be audited
18 financial reports as defined by the American institute
19 of certified public accountants if a licensee's gross
20 receipts exceed one hundred thousand dollars: *Provid-*
21 *ed further*, That annual financial reports for license
22 years ending after the first day of July, one thousand
23 nine hundred ninety-three, must contain a compila-
24 tion and review of such financial report, as defined by
25 the American institute of certified public accountants,
26 if a licensee's gross receipts exceed fifty thousand
27 dollars but are less than one hundred thousand dollars.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

§47-23-1. Short title.

1 This article shall be known as and may be cited as
2 the "Charitable Raffle Boards and Games Act".

§47-23-2. Definitions.

1 For purposes of this article, unless specified
2 otherwise:

3 (a) "Commissioner" means tax commissioner of the
4 state of West Virginia, or his delegate.

5 (b) "Retail face value" means the projected gross
6 income to be received by the retailer from the sale of
7 all raffle chances on or in the charitable raffle boards
8 or games.

9 (c) "Indicia" means the impression authorized by
10 the commissioner to serve as such indicia, and shall be
11 of the design and color prescribed by the commissioner.

12 (d) "Person" means any individual, association,
13 society, incorporated or unincorporated organization,
14 firm partnership or other nongovernmental entity or
15 institution.

16 (e) "Retailer" means every person engaged in the
17 business of making retail sales of raffle chances.

18 (f) "Charitable raffle board" or "charitable raffle
19 game" means a board or other device that has many
20 folded printed slips to be pulled from the board or
21 otherwise distributed without a board on payment of
22 a nominal sum in an effort to obtain a slip or chance
23 that entitles the player to a designated prize: *Provided*,
24 That a "charitable raffle board" or "charitable raffle
25 game" shall not include the sale, by an elementary or
26 secondary school, parent-teacher organization of an
27 elementary or secondary school, youth organization,
28 such as the girl scouts of America or the boy scouts of
29 America, or any political party executive committee,
30 of chances in an effort, by the person purchasing the
31 chance, to obtain a designated prize: *Provided, howev-*
32 *er*, That the aggregate value of all such prizes in any
33 given calendar year shall not exceed three thousand
34 five hundred dollars.

35 (g) "Sale" means the transfer of the ownership of
36 tangible personal property for a consideration.

37 (h) "Wholesaler" or "distributor" means any person
38 or entity engaged in the wholesale distribution of
39 charitable raffle boards or games or similar boards or
40 devices, as defined by the commissioner, and licensed
41 under the provisions of this article, to distribute said
42 devices to charitable raffle boards or games retailers as
43 defined in this article. It also includes anyone who is
44 engaged in the manufacturing, packaging, preparing or
45 repackaging of charitable raffle boards or games for
46 distribution in this state.

§47-23-3. License fee.

1 Wholesalers or distributors of charitable raffle
2 boards and games to retailers shall be licensed and a
3 license fee in the amount of five hundred dollars shall
4 be paid to the commissioner by each wholesaler or
5 distributor for an annual license. Wholesalers shall
6 also pay a fee of six cents on each dollar of retail value
7 of each charitable raffle board or game sold to a
8 retailer. There is hereby imposed an excise tax of six
9 percent of the winnings on any charitable raffle
10 boards and games. The tax shall be collected and
11 remitted to the tax commissioner on a monthly basis
12 by the holder of the raffle game. All revenue from
13 said fee shall be placed in the special revenue account
14 established under the authority of section two-a,
15 article nine, chapter eleven of this code.

**§47-23-4. No fee on charitable raffle boards and games by
municipalities or other governmental
subdivisions.**

1 No municipality or governmental subdivision shall
2 levy any excise or other tax or fee requiring charitable
3 raffle boards or games to be stamped, or requiring
4 licenses for sale thereof, other than licenses which
5 may be imposed as a result of licenses provided for in
6 article twelve, chapter eleven of this code.

§47-23-5. Indicia; how affixed; violations.

1 The indicia required by this article, as described in
2 the charitable raffle boards and games fee rules and
3 regulations, shall be impressed upon each charitable
4 raffle board or game, of an aggregate value of not less
5 than the amount of the fee imposed. The indicia so
6 impressed shall be prima facie evidence of payment of
7 the annual license fee imposed by this article. Indicia
8 printing approval shall be received from only the
9 commissioner by wholesalers and distributors who
10 have paid the annual license fee provided in section
11 three of this article.

12 Except as may be otherwise provided in the rules
13 and regulations prescribed by the commissioner under
14 authority of this article, such indicia shall be
15 impressed by each wholesaler or distributor prior to

16 the sale of such boards or games to a retailer. Each
17 wholesaler or distributor making such sales must be
18 authorized to do business in this state prior to the sale
19 or delivery of any charitable raffle boards or games to
20 any retailer in this state.

21 Whenever any charitable raffle boards or games are
22 found in the place of business of any retailer without
23 the indicia so impressed, the prima facie presumption
24 shall arise that such charitable raffle boards or games
25 are kept therein in violation of the provisions of this
26 article.

§43-23-6. Form of indicia; custody; security for payments.

1 The commissioner shall design the indicia to be used
2 as herein provided for impression on charitable raffle
3 boards or games. The charitable raffle boards or games
4 shall have the purchase price clearly imprinted
5 thereon and shall have printed or impressed thereon
6 the words "State of West Virginia — Raffle Board
7 Stamp" or such other words and figures as the
8 commissioner may deem proper.

§47-23-7. Surety bonds required; release of surety; new bond.

1 The commissioner may require wholesalers and
2 distributors to file continuous surety bond in an
3 amount to be fixed by the commissioner except that
4 the amount shall not be less than one thousand dollars.
5 Upon completion of the filing of a surety bond an
6 annual notice of renewal, only, shall be required
7 thereafter. The surety must be authorized to engage in
8 business within this state. The bond shall be condi-
9 tioned upon faithfully complying with the provisions
10 of this article including the filing of the returns and
11 payment of all fees prescribed by this article.

12 Any surety on a bond furnished hereunder shall be
13 released and discharged from all liability accruing on
14 such bond after the expiration of sixty days from the
15 date the surety shall have lodged, by certified mail,
16 with the tax commissioner a written request to be
17 discharged. This shall not relieve, release or discharge

18 the surety from liability already accrued or which
19 shall accrue before the expiration of the sixty-day
20 period. Whenever any surety shall seek release as
21 herein provided, it shall be the duty of the wholesaler
22 or distributor to supply the commissioner with another
23 bond.

**§47-23-8. How fee paid; reports required; due date; records
to be kept; inspection of records and stocks;
examination of witnesses, summons, etc.**

1 The fee hereby imposed shall be paid by each
2 licensed wholesaler or distributor to the commissioner
3 on or before the fifteenth day of April, July, October
4 and January for the preceding three calendar months.
5 The measure of the fee shall be determined by
6 multiplying the total amount of the retail face value of
7 all charitable raffle boards and games sold by wholes-
8 alers or distributors to retailers during the said three-
9 month period by six percent. All fees due and owing
10 to the commissioner by reason of this article, if paid
11 after the due dates required by this section, shall be
12 subject to the provisions of article ten, chapter eleven
13 of this code. Each wholesaler or distributor shall
14 provide with each quarterly payment of fees a report
15 covering the business transacted in the previous three
16 calendar months and providing such other information
17 as the commissioner may deem necessary for the
18 ascertainment or assessment of the fee imposed by this
19 article. Such report shall be signed under penalty of
20 perjury on such forms as the tax commissioner may
21 prescribe and the wholesaler or distributor shall at the
22 time of filing remit all fees owed or due.

23 The commissioner may authorize any wholesaler or
24 distributor holding the license required by this article
25 to use any metering device approved by the commis-
26 sioner, such devices to be sealed by the commissioner,
27 before being used, which device shall be used only in
28 accordance with the regulations prescribed by the
29 commissioner. A wholesaler or distributor shall pay
30 the fee in advance where a metering device is used, in
31 which event such wholesaler or distributor shall
32 deliver the metering device to the commissioner who

33 shall seal the meter in accordance with the prepay-
34 ment so made.

35 The reports prescribed herein are required,
36 although a fee might not be due or no business
37 transacted for the period covered by the report.

38 Each person required to file a report under this
39 article shall make and keep such records as shall be
40 prescribed by the commissioner that are necessary to
41 substantiate the returns required by this article,
42 including, but not limited to, inventories, receipts,
43 disbursements and sales, for a period of time not less
44 than three years.

45 Unless otherwise permitted, in writing, by authority
46 of the commissioner, each delivery ticket or invoice
47 for each purchase or sale of charitable raffle boards or
48 games must be recorded upon a serially numbered
49 invoice showing the name and address of the seller
50 and the purchaser, the point of delivery, the date,
51 quantity and price of the product sold, and the fee
52 must be set out separately, and such other reasonable
53 information as the commissioner may require. These
54 invoicing requirements also apply to cash sales and a
55 person making such sales must maintain such records
56 as may be reasonably necessary to substantiate his
57 return.

58 In addition to the commissioner's powers set forth in
59 section five, article ten, chapter eleven of this code,
60 the commissioner shall have authority to inspect or
61 examine the stock of charitable raffle boards and
62 games kept in and upon the premises of any person
63 where charitable raffle boards and games are placed,
64 stored or sold, and he shall have authority to inspect
65 or examine the records, books, papers and any equip-
66 ment or records of manufacturers, wholesalers and
67 distributors or any other person for the purpose of
68 determining the quantity of charitable raffle boards
69 and games acquired or disbursed to verify the truth
70 and accuracy of any statement or report and to
71 ascertain whether the fee imposed by this article has
72 been properly paid.

73 In addition to the commissioner's powers set forth in
74 section five, article ten, chapter eleven of this code,
75 and as a further means of obtaining the records, books
76 and papers of a manufacturer, wholesaler, distributor
77 or any other person and ascertaining the amount of
78 fees and reports due under this article, the commis-
79 sioner shall have the power to examine witnesses
80 under oath; and if the witness shall fail or refuse at
81 the request of the commissioner to grant access to the
82 books, records or papers, the commissioner shall
83 certify the facts and names to the circuit court of the
84 county having jurisdiction of the party and such court
85 shall thereupon issue summons to such party to
86 appear before the commissioner, at a place designated
87 within the jurisdiction of such court, on a day fixed, to
88 be continued as the occasion may require for good
89 cause shown and give such evidence and lay open for
90 inspection such books and papers as may be required
91 for the purpose of ascertaining the amount of fee and
92 reports due, if any.

**§47-23-9. Penalty for failure to file return when no fee due;
crimes.**

1 (a) *Penalty for failure to file required return where*
2 *no fee due.* — In the case of any failure to make or file
3 a return when no fee is due, as required by this
4 article, on the date prescribed therefor, unless it be
5 shown that such failure was due to reasonable cause
6 and not due to willful neglect, there shall be collected
7 a penalty of twenty-five dollars for each month of such
8 failure or fraction thereof.

9 (b) It shall be a misdemeanor, punishable pursuant
10 to the terms of this article, if any person:

11 (1) Makes any false entry upon an invoice required
12 to be made under the provisions of this article or with
13 intent to evade the fee imposed by this article presents
14 any such false entry for the inspection of the
15 commissioner;

16 (2) Prevents or hinders the commissioner from
17 making a full inspection of any place where charitable
18 raffle boards or games subject to the fee imposed by

19 this state are sold or stored or prevents or hinders the
20 full inspection of invoices, books, records or papers
21 required to be kept under the provisions of this article;

22 (3) Sells any charitable raffle boards or games in this
23 state without there having been first affixed thereto
24 the indicia required by this article;

25 (4) Being a retailer in this state, has in his possession
26 any charitable raffle boards or games not bearing the
27 indicia herein required to be affixed thereto or,
28 whoever fails to produce on demand by the commis-
29 sioner invoices of all charitable raffle boards and
30 games purchased or received by him within three
31 years prior to such demand, unless upon satisfactory
32 proof it is shown that such nonproduction is due to
33 providential or other causes beyond his control;

34 (5) Being a retailer in this state, purchases or
35 acquires charitable raffle boards and games from any
36 person other than a wholesaler or distributor licensed
37 under this article; or

38 (6) Who is not a wholesaler or distributor of chari-
39 table raffle boards or games, as provided by this
40 article, shall have in his possession within the state
41 any charitable raffle boards or games not bearing the
42 proper indicia of this state, such possession shall be
43 inferred to be for the purpose of evading the payment
44 of the fees imposed or due thereon.

45 (c) Any person convicted of violating the provisions
46 of subsection (b) of this section, shall be confined in
47 the county jail for not less than one year or fined not
48 less than one thousand dollars nor more than ten
49 thousand dollars, or both fined and imprisoned.

50 (d) Any person who falsely or fraudulently makes,
51 forges, alters or counterfeits any indicia prescribed, or
52 defined, by the provisions of this article, or its related
53 rules and regulations, or who knowingly and willfully
54 makes, causes to be made, purchases, receives or has
55 in his possession, any device for forging or counterfeit-
56 ing any indicia, or has in his possession, any indicia
57 not properly issued by the commissioner or tampers

58 with or alters any stamping device authorized by the
59 commissioner, or uses more than once any indicia
60 provided for and required by this article for the
61 purpose of evading the fee hereby imposed, shall be
62 guilty of a felony, and, upon conviction thereof, shall
63 be sentenced to pay a fine of not less than five
64 thousand dollars nor more than ten thousand dollars
65 or imprisoned in the penitentiary for a term of not less
66 than one year nor more than five years, or both fined
67 and imprisoned.

68 (e) Whenever the commissioner, or any of his
69 deputies or employees authorized by him, or any
70 peace officer of this state shall discover any charitable
71 raffle boards or games subject to the fee as provided
72 by this article and upon which the fee has not been
73 paid as herein required, such charitable raffle boards
74 and games shall thereupon be deemed to be contra-
75 band, and the commissioner, or such deputy or
76 employee or any peace officer of this state, is hereby
77 authorized and empowered forthwith to seize and take
78 possession of such charitable raffle boards or games,
79 without a warrant, and such charitable raffle boards
80 and games shall be forfeited to the state, and the
81 commissioner shall retain the forfeited charitable
82 raffle boards and games until they are no longer
83 needed as evidence in any prosecution of the person
84 from whom the raffle boards and games were seized.
85 The commissioner may within a reasonable time
86 thereafter destroy such charitable raffle boards and
87 games or may affix the indicia required by this article
88 upon each charitable raffle boards or games and sell
89 said charitable raffle boards or games at public auction
90 to the highest bidder: *Provided*, That such seizure and
91 destruction or public auction shall not be deemed to
92 relieve any person from fine or imprisonment as
93 provided herein for violation of any provisions of this
94 article. Such destruction may be made in any county
95 the commissioner deems most convenient and eco-
96 nomical. All revenue from said license fee shall be
97 deposited in the special revenue account established
98 under the authority of section two-a, article nine,
99 chapter eleven of this code and used to support the

100 investigatory activities provided for in said section.

101 (e) Magistrates shall have concurrent jurisdiction
102 with any other courts having jurisdiction for the trial
103 of all misdemeanors arising under this article.

§47-23-10. Transportation of unstamped charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.

1 Every person who shall knowingly transport charita-
2 ble raffle boards or games not bearing indicia as
3 required by section six of this article upon the public
4 highways, waterways, airways, roads or streets of this
5 state shall have in his actual possession invoices or
6 delivery tickets for such charitable raffle boards or
7 games which shall show the true name and the
8 complete and exact address of the manufacturer, the
9 true name and complete and exact address of the
10 wholesaler or distributor who is the purchaser, the
11 quantity and description of the charitable raffle boards
12 and games transported and the true name and com-
13 plete and exact address of the person who has or shall
14 assume payment of the West Virginia state fee, or the
15 tax, if any, of the state or foreign country at the point
16 of ultimate destination: *Provided*, That any common
17 carrier which has issued a bill of lading for a shipment
18 of charitable raffle boards and games and is without
19 notice to itself or to any of its agents or employees that
20 said charitable raffle boards or games have no proper
21 indicia affixed thereto as required by section six of this
22 article shall be deemed to have complied with this
23 article and the vehicle or vessel in which said chari-
24 table raffle boards or games are being transported
25 shall not be subject to confiscation hereunder. In the
26 absence of such invoices, delivery tickets or bills of
27 lading, as the case may be, the charitable raffle boards
28 or games so transported, the vehicle or vessel in which
29 the charitable raffle boards or games are being trans-
30 ported and any paraphernalia or devices used in
31 connection with such, are declared to be contraband
32 goods and may be seized by the commissioner, his
33 agents or employees or by any peace officer of the

34 state without a warrant.

35 Any person who transports charitable raffle boards
36 or games in violation of this section shall be guilty of
37 a misdemeanor, and, upon conviction thereof, shall be
38 fined not less than three hundred dollars nor more
39 than five thousand dollars, or imprisoned in the
40 county jail not more than one year, or both fined and
41 imprisoned.

42 Charitable raffle boards and games seized under this
43 section shall be forthwith destroyed in the manner
44 provided hereinafter in this section and such destruc-
45 tion shall not relieve the owner of the destroyed
46 charitable raffle boards and games of any action by the
47 commissioner for violations of this or any other
48 sections of this article.

49 The commissioner shall immediately, after any
50 seizure made pursuant to this section, institute a
51 proceeding for the confiscation thereof in the circuit
52 court of the county in which the seizure is made. The
53 court may proceed in a summary manner and may
54 direct confiscation by the commissioner: *Provided,*
55 That any person claiming to be the holder of a security
56 interest in any vehicle or vessel, the disposition of
57 which is provided for above, may present his petition
58 so alleging and be heard, and in the event it appears
59 to the court that the property was unlawfully used by
60 a person other than such claimant, and if the said
61 claimant acquired his security interest in good faith
62 and without knowledge that the vehicle or vessel, was
63 going to be so used, the court shall waive forfeiture in
64 favor of such claimant and order the vehicle or vessel
65 returned to such claimant.

§47-23-11. Administration; rules.

1 (a) The commissioner shall promulgate rules to
2 administer the provisions of this article in accordance
3 with the provisions of chapter twenty-nine-a of this
4 code. Additionally, the commissioner shall promulgate
5 a rule which sets forth a means of verifying on the
6 face of every charitable raffle boards or games that the
7 charitable raffle boards or games is distributed by a

8 wholesaler licensed pursuant to the provisions of this
9 article.

10 (b) The commissioner shall deny an application for
11 a license if he finds that the issuance thereof would be
12 in violation of the provisions of this article.

13 (c) The commissioner may suspend, revoke or refuse
14 to renew any license issued hereunder for a material
15 failure to maintain the records or file the reports
16 required by this article or administrative rule if the
17 commissioner finds that said failure will substantially
18 impair the commissioner's ability to administer the
19 provisions of this article with regard to said licensee.

20 (d) The burden of proof in any administrative or
21 court proceeding is on the applicant to show cause
22 why a charitable raffle boards or games wholesaler's
23 or distributor's license should be issued or renewed
24 and on the licensee to show cause why its license
25 should not be revoked or suspended.

§47-23-12. Severability.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to
6 the provision thereof directly involved in the contro-
7 versy in which such judgment shall have been ren-
8 dered and the applicability of such provision to other
9 persons or circumstances shall not be affected thereby.

§47-23-13. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten, chapter eleven of this code shall apply to the fees
4 imposed by this article with like effect as if said act
5 were applicable only to the fees imposed by this article
6 and were set forth in extenso in this article.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is appended* this the *5th*
day of *April* *May*, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/23/93

Time 9:10 AM