

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 104**

4 (By Senators Edgell and D. Facemire)

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6 [Originating in the Committee on the Judiciary;

7 reported January 17, 2012.]

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11 A BILL to amend and reenact §11-24-11b of the Code of West
12 Virginia, 1931, as amended, relating to the corporation net
13 income tax; updating terms; amending a credit for utility
14 taxpayers with net operating loss carryovers; and providing a
15 different procedure for determining the credit.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §11-24-11b of the Code of West Virginia, 1931, as
18 amended, be amended and reenacted to read as follows:

19 **ARTICLE 24. CORPORATION NET INCOME TAX.**

20 **§11-24-11b. Credit for utility taxpayers with net operating loss**
21 **carryovers.**

22 (a) *General.* -- There shall be allowed to every eligible
23 taxpayer a nonrefundable credit against its primary tax liability
24 imposed under this article for any net operating loss carryovers

1 that ~~exist~~ existed as of December 31, 2006.

2 (b) (1) "Eligible taxpayer" means any person subject to the
3 business and occupation taxes prescribed by article thirteen of
4 this chapter and exercising any privilege taxable under section
5 two-o of this article.

6 (2) "Eligible taxpayer" also includes an affiliated group of
7 taxpayers if:

8 (A) For tax years beginning on or before December 31, 2009,
9 the group elects to file a consolidated corporation net income tax
10 return under this article if one or more affiliates included in the
11 affiliated group would qualify as an eligible taxpayer under
12 subdivision (1) of this subsection; or

13 (B) For tax years beginning on or before January 1, 2010, the
14 group is required to file a combined corporate net income tax
15 return under this article if one or more affiliates included in the
16 affiliated group would qualify as an eligible taxpayer under
17 subdivision (1) of this subsection.

18 (c) *Amount of credit.* -- The amount of credit allowed shall be
19 equal to one-quarter percent of the remaining current balance of
20 the eligible taxpayer's West Virginia net operating loss carryovers
21 allowed by subsection (d), section six of this article that ~~exist~~
22 existed as of December 31, 2006, decreased by the net operating
23 loss used or applied in each tax year beginning on or after January
24 1, 2008. Effective for tax years beginning on or after January 1,

1 2010, the amount of credit allowed shall be equal to the difference
2 between the current year tax rate as defined by section four of
3 this article and nine percent of the remaining balance of the
4 eligible taxpayer's West Virginia net operating loss carryovers
5 allowed by subsection (d), section six of this article that existed
6 as of December 31, 2007, decreased by net operating loss used or
7 applied in each tax year beginning on or after January 1, 2008.

8 (d) *Application of credit.* -- The amount of credit allowed
9 shall be taken against the tax liabilities of the eligible taxpayer
10 under this article as shown on its annual return for the ~~taxable~~
11 tax year in which its net operating loss carryovers are utilized,
12 as provided in subsection (d), section six of this article. Any
13 credit remaining after application against the eligible taxpayer's
14 tax liabilities for the current year may be carried forward to
15 subsequent tax years until ~~used~~ the tax year when the remaining
16 current balance of the eligible taxpayer's West Virginia net
17 operating loss carryovers allowed by subsection (d), section six of
18 this article that existed as of December 31, 2007, decreased by net
19 operating loss used or applied in each tax year beginning on or
20 after January 1, 2008, is zero. For purposes of determining the
21 remaining current balance of the eligible taxpayer's West Virginia
22 net operating loss allowed by subsection (d), section six of this
23 article that existed as of December 31, 2007, decreased by net
24 operating loss used or applied in each tax year beginning on or

1 after January 1, 2008 under this section, a first in, first out,
2 net operating loss usage computation shall apply.

NOTE: The purpose of this bill is to provide a different procedure for determining the credit for utility taxpayers with net operating loss carryovers relating to the corporation net income tax.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.