

BUSINESS TAXES

1. Corporation Net Income Tax (W.Va. Code §11-24)
2. Business Franchise Tax (W.Va. Code §11-23)
3. Severance Tax (W.Va. Code §§11-13A and 11-12B)
4. Special Two-Cent Tax (W.Va. Code §22-3-32)
5. Special Reclamation Tax (W.Va. Code §22-3-11)
6. Business & Occupation Tax (W.Va. Code §11-13)
7. Telecommunications Tax (W.Va. Code §11-13B)
8. Severance and Business Privilege Tax (W. Va. Code §11-13A)
9. Health Care Provider Tax (W.Va. Code §11-27)
10. Insurance Taxes and Fees (W.Va. Code §33)

The State of West Virginia imposes two primary business taxes: the Corporation Net Income Tax (CNIT) and the Business Franchise Tax (BFT). Additional taxes are levied upon certain industries. A Severance Tax is imposed on the production of natural resources. The Business and Occupation Tax is imposed upon public utilities, electric power producers and gas storage operators. A Telecommunications Tax is imposed upon companies engaged in the business of telecommunications. The Severance and Business Privilege Tax and Health Care Provider Tax are imposed on certain health care providers. Finally, an Insurance Tax is collected from every insurance company transacting insurance business in the State.

CORPORATION NET INCOME TAX

Domestic and foreign corporations doing business in West Virginia or deriving income from property, activity or other sources within the State are subject to the Corporation Net Income Tax (CNIT). Certain insurance companies, certain trusts, S corporations, certain production credit associations and nonprofit corporations without authority to issue capital stock are all exempt from tax. However, the tax is applicable to the unrelated business income of nonprofit corporations. The Corporation Net Income Tax is imposed at the rate of 9 percent.

CNIT is imposed on taxable corporation income as defined by federal law and as adjusted by State law. Some adjustments that can increase federal taxable income are as follows:

1. interest or dividends on U.S. government obligations or securities that are exempt from federal income tax but not from state income tax;
2. interest or dividends from all state or local bonds or securities excluded from federal taxable income;
3. all taxes imposed on or measured by net income that are expensed on the federal corporate income tax return;
4. the amount of unrelated business taxable income of a corporation that because of its purposes is generally exempt from federal income tax, and
5. the federal net operating loss deduction.

Modifications that can decrease federal taxable income are as follows:

1. a portion of gains from sale or disposition of property having a higher fair market value on July 1, 1967 than its adjusted basis on that date for federal income tax purposes;
2. state income tax refunds or credits for overpayment included in federal taxable income;
3. interest expense incurred to purchase or carry obligations or securities of states or their political subdivisions, if disallowed in determining federal taxable income;
4. the amount of dividends received to the extent included in federal taxable income;
5. that portion of salary expenses disallowed as a deduction for federal income tax purposes due to the claiming of the federal jobs credit;
6. the amount received from a foreign corporation as dividend income to the extent included in federal taxable income;
7. foreign source income to the extent included in federal taxable income, and
8. employer contributions to medical savings accounts.

CNIT law also provides for the elective adjustment to taxable income for expenditures for water and air pollution control facilities as defined by sections 48(h)(12)(B) and (C) of the Internal Revenue Code, with the addition to taxable income of depreciation and amortization allowances taken on such facilities.

A decreasing adjustment is allowed for certain government obligations and obligations secured by residential property. The deduction is equal to the average monthly percentage of total corporate assets represented by tax-exempt federal obligations, West Virginia obligations and mortgages on residential property located within the State multiplied by taxable income.

A taxpayer may claim its aggregated net operating loss carry-overs plus the net operating loss carry-backs. However, no more than \$300,000 of the net operating loss from any taxable year may be carried back to the previous three years. Excess net operating losses may be carried forward for up to fifteen years from their occurrence.

Corporations subject to taxation in West Virginia and one or more other states must generally use a three-factor apportionment formula to determine the portion of their total income that is subject to taxation in West Virginia. The three factors consist of property, payroll and sales. The sales factor is given a 50 percent weight while the other two factors each receive a weight of 25 percent. Any factor with a zero denominator is eliminated from the apportionment computation. The value of moveable property to be included in the numerator of the property factor is based on the number of days the property is physically located in West Virginia expressed as a percentage of the total number of days the property is located everywhere. The gross receipts from sales of tangible personal property shipped from this State before sale and not subject to an income tax by the state of destination are excluded from both the numerator and the denominator of the sales apportionment factor. This rule does not apply to sales to the United States government.

Special apportionment rules apply to motor carriers and financial organizations. Motor carriers with West Virginia nexus apportion business income by use of the ratio of total vehicle miles in West Virginia to total vehicle miles everywhere. Multi-state financial organizations apportion business income by a special gross receipts factor. The gross receipts factor is the ratio of receipts attributable to West Virginia customers to receipts attributable to all customers. A financial

BUSINESS TAXES

organization has nexus in West Virginia if it obtains or solicits business from twenty or more persons within the State or if total West Virginia receipts equals at least \$100,000.

While most business income of multi-state corporations is subject to the apportionment formula mentioned above, some types of income are directly allocated to the State. Adjusted income that is not gained in the regular course of the taxpayer's business and which comes from

1. rents and royalties from real or tangible personal property, and/or
2. capital gains and losses from sales of real property located within this State, and/or
3. interest and dividends if the taxpayer's commercial domicile is in the State, and/or
4. patent or copyright royalties

is allocated to West Virginia and becomes West Virginia taxable income to the extent that these sources of non-business income are owned, used or otherwise represent taxable activity in West Virginia.

Information returns must be filed by every corporation electing to be taxed under subchapter S of the Internal Revenue Code. There is a \$50 penalty

1. for failure to file an information return,
2. for failure to include all required information, or
3. for including incorrect information on an information return.

If the taxpayer corrects these failures by thirty days after the required filing date, the penalty is only \$15. A failure corrected after thirty days but before August 1 of the calendar year in which the filing is required results in \$30 penalty.

A corrected information return filed by the August 1 deadline is considered correctly filed, and no penalty will be assessed on the returns if the number of corrected returns filed in the calendar year does not exceed the greater of

1. 10,
2. 0.5 percent of the total number of returns required to be filed by the corporation with the State Tax Commissioner.

The West Virginia Code provides for a variety of tax credits that may be applied against CNIT liability in some cases. These include the Business Investment and Jobs Expansion Credit, the Research and Development Projects Credit, the West Virginia Capital Company Credit, the Credit for Reducing Utility Payments to Low-Income Families, the Credit for Reducing Telephone Charges to Low-Income Families, the Military Employment Incentive Credit, the Industrial Facilities Coal-Based Synthetic Fuels Credit, the Historic Rehabilitated Buildings Investment Credit, the Colin Anderson Employment Credit, the Neighborhood Investment Credit, the Environmental Agricultural Equipment Credit, the Value-Added Agricultural Products Employee Training Credit, the Consumer-Ready Wood Products Manufacturing Employment Credit and the Alternative-Fuel Motor Vehicles Credit. Explanations of these credits may be found in the Tax Credits section.

BUSINESS FRANCHISE TAX

All partnerships and corporations, including S corporations, are subject to the Business Franchise Tax. The Business Franchise Tax is a tax on the privilege of engaging in business in West Virginia. It applies to all domestic corporations, corporations that have a commercial domicile in West Virginia, and foreign or domestic corporations or partnerships that own or lease real or tangible personal property or do business in West Virginia. The Business Franchise Tax was levied on net equity apportioned to the State at a rate of 0.75 percent or \$50, whichever is greater, for taxable years beginning prior to July 1, 1997. For taxable years beginning after June 30, 1997, the tax rate is 0.70 percent of apportioned equity or \$50, whichever is greater.

The following organizations are exempt from this tax:

1. businesses that are not corporations or partnerships, such as sole proprietors or self-employed persons;
2. corporations and organizations that are exempt from federal income tax;
3. insurance companies that pay a premium tax in West Virginia;
4. production credit associations organized under the federal "Farm Credit Act of 1933";
5. any trust established pursuant to Section 186, Chapter 6, Title 29 of the United States Code;
6. any credit union established under W. Va. Code §31;
7. political subdivisions or instrumentalities of West Virginia, and
8. joint ventures and other unincorporated organizations that elect not to be treated as partnerships for federal income tax purposes.

Partnerships and corporations that engage in agriculture and farming in West Virginia or are licensed to conduct horse or dog racing meetings in West Virginia are also exempt from Business Franchise Tax if that is their only activity. If the activities of a corporation or partnership include the activity of agriculture and farming and another activity, the exemption from Business Franchise Tax applies only to that portion of the capital of the corporation or partnership that is attributable to the activity of farming and agriculture. Farming cannot shelter the capital of the corporation or partnership that is attributable to other activities. A corporation or partnership that pays this State's pari-mutuel tax on wagering is exempt from the Business Franchise Tax except to the extent it engages in other activities that are not subject to the pari-mutuel tax.

For corporations the measure of the tax is their capital, which is the average of the beginning and ending balances of the value of common and preferred stock, plus both appropriated and unappropriated retained earnings and paid-in capital or capital surplus, less treasury stock. The capital of partnerships is defined as the average of the beginning and ending balances of the partner's capital accounts. These items of capital are taken from Schedule L of the corporation's federal form 1120 or the partnership's federal form 1065 as filed with the Internal Revenue Service for the taxable year.

A decreasing adjustment is allowed against the tax base for certain government obligations and obligations secured by residential property. The deduction is equal to the percentage of total assets represented by tax-exempt federal obligations, tax-exempt West Virginia obligations, and mortgages on residential property located within the State multiplied by net equity (capital). Averages of beginning and ending monthly balances of both total assets and assets as represented by the items mentioned above are used in the computation of this deduction.

Corporations subject to taxation in West Virginia and one or more other states must use a three-factor apportionment formula to determine the portion of total capital subject to taxation in West Virginia. The three factors consist of property, payroll and sales. The sales factor is given a 50 percent weight while the other two factors each receive a weight of 25 percent. The value of moveable property to be included in the numerator of the property factor is based on the number of days the property is physically located in West Virginia expressed as a percentage of the total number of days the property is located everywhere.

Special apportionment rules apply to multi-state financial organizations. These organizations apportion business based on a one-factor customer location gross receipts factor.

Credits Against Tax Liability

1. Taxpayers subject to the Business and Occupation Tax may take a credit equal to the amount of West Virginia Business Franchise Tax liability multiplied by the percentage that gross income subject to Business and Occupation Tax is of total West Virginia gross receipts. This credit is available to public utilities and electric power generators only.
2. A parent corporation may take credit for its proportional share of Business Franchise Taxes paid by a partnership in which it is a member or by a subsidiary corporation if a consolidated return is not filed.
3. Certain banks and financial institutions may take a credit equal to property tax liability on bank shares.

The West Virginia Code provides for a variety of other tax credits that may be applied against Business Franchise Tax liability in some cases. These include the Business Investment and Jobs Expansion Credit, the Industrial Expansion and Revitalization Credit, the Research and Development Projects Credit, the West Virginia Capital Company Credit, the Residential Housing Development Projects Credit, the Industrial Facilities Coal-Based Synthetic Fuels Credit, the Colin Anderson Employment Credit, the Neighborhood Investment Credit, the Value-Added Agricultural Products Employment Training Credit, and the Consumer-Ready Wood Products Manufacturing Employment Credit. Explanations of these credits may be found in the Tax Credits section.

SEVERANCE TAX

The Severance Tax is a gross receipts tax levied on businesses that sever, extract, and/or produce natural resource products within West Virginia. The Severance Tax base includes the processing and treatment of natural resource products as part of the production process. However, a person subject to the Severance Tax who purchases raw natural resources and processes them into commercially usable products only pays tax on the value added in the processing and not on the total value of the product. The processing tax provision does not apply to natural gas, timber, or limestone or sandstone quarried or mined. The tax under these natural resource categories is levied only on the value of the product immediately after severance from the earth and before processing.

The tax rates on natural resources, except timber, are generally 5 percent of gross receipts. The following is a list of business classifications and their respective tax rates:

BUSINESS TAXES

<u>Business Classification</u>	<u>Rate</u>
Coal (all rates include the 0.35% additional severance tax for the benefit of counties and municipalities)	5.00%
If seam thickness of deep mine is less 37 inches for new mines not operating between 10/12/96 and 4/11/97	1.00%
If seam thickness of deep mine is between 37 inches and 45 inches for new mines not operating between 10/12/96 and 4/11/97	2.00%
Limestone or sandstone quarried or mined	5.00%
Oil	5.00%
Natural gas	5.00%
Sand, gravel or other mineral products not quarried or mined	5.00%
Timber	3.22%
Other natural resource products	5.00%

Minimum Tax

An annual minimum Severance Tax on coal is imposed on every business severing, extracting or producing coal in West Virginia for sale, profit or commercial use. This minimum Severance Tax applies to all coal severed in West Virginia, regardless of whether such coal is subject to the regular 5 percent Severance Tax rate or the alternative 1 percent or 2 percent rates. The tax rate for the minimum Severance Tax is 75 cents per ton of coal produced for sale. A taxpayer who pays the minimum Severance Tax is allowed a credit against the Severance Tax imposed on coal; however, no credit is allowed against the additional tax levied on the severance, extraction and production of coal for the benefit of local governments. There are no investment credits allowed against the minimum tax on coal. The minimum Severance Tax is due in monthly installments.

Every taxpayer subject to the minimum Severance Tax is required to file an annual return. If a taxpayer files a consolidated, composite or unitary return for the Severance Tax imposed under W. Va. Code §11-13A, the taxpayer must also file as part of the consolidated, composite or unitary group for the minimum Severance Tax. The Tax Commissioner may require a cash or corporate security bond to ensure compliance. The amount of the bond shall be no greater than three times the average quarterly liability for quarterly taxpayers, five times the average monthly liability for monthly taxpayers, or twice the average periodic liability for taxpayers filing returns on other than a monthly or quarterly basis. No bond shall be set at less than \$500.

Credits Against Tax Liability

An annual tax credit of \$500 (\$41.67 per month) is provided for each business engaged in activities in this State that are subject to the Severance Tax. The Tax Code also provides for a variety of other tax credits that may be applied against Severance Tax liability in some cases. These include the Industrial Expansion and Revitalization Credit, the Research and Development Projects Tax Credit, the Coal-Loading Facilities Credit and the West Virginia Capital Company Credit. Explanations of these credits may be found in the Tax Credits section.

Additional Tax on the Severance, Extraction and Production of Coal (W.Va. Code §11-13A-6)

An additional tax is levied on the severance, extraction and production of coal for the benefit of local governments at the rate of \$0.35 per \$100. This additional tax is collected for counties and municipalities by the Department of Tax and Revenue. Therefore, the tax rate for the coal classification on the Severance Tax return is the total of the State rate and the additional tax for the benefit of local governments. The revenue from the additional severance tax is then distributed to local governments quarterly. The amount to be distributed is calculated without application of any credits against the Severance Tax that are otherwise authorized.

Revenue produced by the additional severance tax is divided into two funds. Seventy-five percent goes into the Coal County Revenue Fund, and the remaining 25 percent goes into the All Counties and Municipalities Revenue Fund. All counties and municipalities must create a coal severance tax revenue fund that shall be the depository for money distributed to any county or municipality.

Coal County Revenue Fund

A share of the Coal County Revenue Fund has been distributed quarterly by the State Treasurer to the sheriff of each coal-producing county since January 1, 1976. Each coal-producing county receives as payment a fraction of this fund that is the same fraction that the coal produced in that county is of the total amount of coal produced in West Virginia. The amount of each quarterly payment is based on production data for the previous quarter. In counties with population over 250,000, at least 75 percent of the funds received from the Coal County Revenue Fund shall be apportioned to and expended within the coal-producing area or areas of the county.

All Counties and Municipalities Revenue Fund

Money from this smaller fund has been distributed proportionately based on population to every municipality and county quarterly since July 1, 1976. To make these distributions, the State Treasurer first divides the fund so that each county is allocated a fraction of the fund that is the same fraction that the population of the county is of the total population of West Virginia. When each county has been allocated a share, each share is then divided into two parts: rural and municipal.

The State Treasurer sends to the sheriff of each county as payment a fraction of this fund that is the same fraction that the population of its unincorporated or rural area is of the total population of the county. From the remainder of each county's share the State Treasurer sends to the treasurer

BUSINESS TAXES

of each incorporated town or city as payment a fraction of this remainder that is the same fraction that the population of each incorporated town or city is of the total municipal population of the county. The population data is taken from the most recent decennial U.S. Census of Population.

**THE ADDITIONAL TAX ON THE SEVERANCE,
EXTRACTION AND PRODUCTION OF COAL**

Fiscal Year	Gross Yield (Millions)
1986-1987	\$10.4
1987-1988	11.0
1988-1989	12.9
1989-1990	14.9
1990-1991	14.9
1991-1992	14.0
1992-1993	15.8
1993-1994	15.2
1994-1995	15.5
1995-1996	15.4
1996-1997	16.2

Dedication of Oil and Gas Severance Tax Revenue

A portion of Severance Tax revenue from the production of gas or oil in West Virginia was distributed to counties and municipalities annually beginning on July 1, 1996. This dedication of funds has been phased in over a two-year period as follows:

1. Beginning July 1, 1996, 5 percent of the Severance Tax collections attributable to oil and gas production was dedicated for the use and benefit of counties and municipalities in the State.
2. Beginning July 1, 1997, the percentage distributed to counties and municipalities increased to 10 percent.

The dedicated Severance Tax revenue is to be divided into two funds. Seventy-five percent will go into the Oil and Gas County Revenue Fund, and the remaining 25 percent goes into the All Counties and Municipalities Revenue Fund. Distributions to any county or municipality are to be deposited into the general revenue fund of the entity and may be expended for any purpose, except that no more than 25 percent of the amount received may be spent for personal services. Also, in oil and gas-producing counties with a population in excess of 200,000, 75 percent of the monies received from the Oil and Gas County Revenue Fund must be spent in the oil and gas-producing areas of the county. The fiscal year 1997 distribution of these funds amounted to approximately \$375,000.

Oil and Gas County Revenue Fund

A share of the Oil and Gas County Revenue Fund will be distributed annually by the State Treasurer to each oil or gas-producing county. The amount allocated to each county will be determined as follows:

- 1 for gas, the total amount available for distribution derived from Severance Tax on gas will be divided by the total volume of cubic feet of gas extracted in West Virginia during the preceding year. This quotient will be multiplied by the number of cubic feet of gas taken from the ground in each county during the preceding year.
2. for oil, the total amount available for distribution derived from Severance Tax on oil will be divided by the total number of barrels of oil extracted in West Virginia during the preceding year. This quotient will be multiplied by the number of barrels of oil taken from the ground in each county during the preceding year .

All Counties and Municipalities Revenue Fund

Money from this smaller fund will be distributed proportionately based on population to every municipality and county. To make these distributions, the State Treasurer will first divide the fund so that each county is allocated a fraction of the fund that is the same fraction that the population of the county is of the total population of West Virginia. When each county has been allocated a share, each share is then divided into two parts: rural and municipal.

The State Treasurer sends to the sheriff of each county as payment a fraction of this fund that is the same fraction that the population of its unincorporated or rural area is of the total population of the county. From the remainder of each county's share the State Treasurer sends to the treasurer of each incorporated town or city as payment a fraction of this remainder that is the same fraction that the population of each incorporated town or city is of the total municipal population of the county. The population data is taken from the most recent decennial U.S. Census of Population.

SPECIAL TWO-CENT TAX

A special 2-cent per ton tax is imposed on producers of coal. For purposes of this tax, producers of coal are persons who own the coal immediately after its severance from the ground. The measure of this tax is "tons of clean coal" sold during the reporting period produced by the seller of the coal. The person who produces and sells unprocessed coal must convert raw tonnage sold to "tons of clean coal" and pay tax on the lower number. Persons who process coal they produced and coal produced by another producer must keep records to prove the accuracy of their tax returns.

This tax must be remitted on or before the last day of the calendar month following the month during which the tax accrued. Persons who remit tax monthly must remit the tax that accrues for the month of May by June 15 instead of June 30.

SPECIAL RECLAMATION TAX

Coal production within West Virginia is subject to the Reclamation Tax of three cents per ton of clean coal mined. The tax proceeds are deposited into the special reclamation fund for use in mine reclamation projects. This tax shall be collected as long as the State's mine reclamation liabilities under the Surface Coal Mining and Reclamation Act exceed the accrued amount in the special reclamation fund.

BUSINESS AND OCCUPATION TAX

The Business and Occupation Tax applies only to public utilities, electric power producers and gas storage businesses. Descriptions of these tax categories, tax bases and tax rates are listed below.

1. Public Service or Utility Business Excluding Electricity (W.Va. Code §11-13-2d)

The measure of tax in this category is gross income. Businesses excluded from this category are railroads, railroad car companies, express companies, pipeline companies, motor carriers, telephone and telegraph companies, steamboat or steamship water carriers, and municipally-owned water companies. The tax rates imposed under W.Va. Code §11-13-2d are as follows:

Water Companies (except municipal waterworks)	\$4.40 per \$100
Natural Gas Companies and Toll Bridges	\$4.29 per \$100
All Other Public Utilities	\$2.86 per \$100

Sales of natural gas are excluded from tax, if separately metered and used by the purchaser to derive hydrogen and carbon monoxide for use in the manufacture of chemicals in West Virginia. No exclusion is allowed for the sale of natural gas from which the purchaser derives carbon monoxide or hydrogen for resale.

2. Electric Power Producers or Distributors (W.Va. Code §§11-13-2d, 2m and 2n)

a. Electric Power Producers

The tax base for in-state producers is generally a fixed tax based upon average taxable generating capacity (kilowatts) for the 1991 through 1994 calendar years. Taxable generating capacity is defined as a generating unit's capacity factor (i.e., average four-year generation divided by the unit's maximum possible annual generation) multiplied by its official capability (i.e., nameplate capacity). Taxable generating capacity may also be mathematically expressed as the average four-year generation (i.e., 1991-1994) of a generating unit divided by the number of hours in a year (i.e., 8,760 hours).

If the generating unit was newly installed after January 1, 1991 but prior to December 31, 1994, then the average four-year generation is computed through the annualization of the average monthly net generation of such unit during its months of operations between 1991 and 1994. If a new generating unit, other than a peaking unit

is placed into service after March 10, 1995, that unit's taxable generating capacity equals 40 percent of its nameplate capacity. If a peaking unit is placed in service after March 10, 1995, that unit's taxable generating capacity equals 5 percent of its nameplate capacity. A peaking unit is a unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.

If a generating unit is retired from service or placed in inactive reserve, the taxpayer is no longer for the tax on such unit. These units must be out-of-service for at least twelve months to qualify for either the retired or inactive status.

If a generating unit produced electricity for sale to a plant location of a customer engaged in manufacturing activity and such sale exceeded an average of 200,000 kilowatts per hour between 1991 and 1994, then that generating unit qualifies for a partial exclusion from tax. This annual exclusion equals 21/26ths of the average annual kilowatt hours of electricity generated and sold to such customer between 1991 and 1994. Taxable generation capacity for such a generation unit must be split between average generation attributable to the large volume user and average generation attributable to all other uses. The large user exclusion is a fixed amount based upon average activity between 1991 and 1994. There is no additional exclusion attributable to current activity. However, an alternative kilowatt-hour tax calculation ensures that the total tax on taxable capacity attributable to large volume sales does not exceed an amount equal to \$0.0005 per kilowatt-hour. If a new 200,000 kilowatt per hour customer appears, there is no additional 21/26ths exclusion for the generating unit supplying power to such customer. However, such additional sales should result in no incremental increase in the fixed taxable generating capacity tax. A 21/26ths exclusion also applies to generating units producing electric power and alternative energy forms from gob or other mine refuse.

The tax base (i.e., taxable generating capacity) already incorporates average exclusion values (1991-1994 period) for separately metered power consumed in either an electrolytic process for the manufacture of chlorine or in the manufacturing of ferroalloy. Therefore, there is no additional exclusion for current activity.

The annual rate on taxable generating capacity is \$22.78 per kilowatt. As of January 31, 1996, the rate of tax on generating units with a flue gas desulfurization system fell to \$20.70 per kilowatt.

b. Electric Power Distributors

Electric power distribution companies generally pay a unit tax on distribution. The unit tax rate is \$0.0019 per kilowatt hour. A reduced tax rate of \$0.0005 per kilowatt hour applies to sales and demand charges exceeding 200,000 kilowatts per hour per year per customer.

An electric light and power company that actually paid tax under section 11-13-2m (i.e., gross receipts tax on generation) or under subdivision 11-13-2d(a)(3) (i.e., gross receipts tax on electric utility distribution in West Virginia) for every month in calendar year 1994 must pay the higher of a tax based upon gross receipts or a tax based on taxable capacity (generation) and/or units of distribution. The gross receipts tax based expires as of January 1, 1998.

The following are implicitly excluded from taxation under the Business and Occupation Tax on electric power production or distribution:

BUSINESS TAXES

1. sales of electric power if separately metered and consumed in an electrolytic process for the manufacture of chlorine in West Virginia, and
 2. sales of electric power if separately metered and consumed in the manufacture of ferroalloy in West Virginia where the term "ferroalloy" means any of various alloys of iron and one or more other elements used as a raw material in the production of steel but does not include the final production of steel.
3. Gas Storage Business (W.Va. Code §11-13-2e)

Persons engaging in West Virginia in any natural gas storage activity using one or more gas storage reservoirs pay a tax at the lesser of the average monthly tax paid during a five-year period (i.e., 1990-1994) or five cents multiplied by either the net number of dekatherms of gas injected into or withdrawn from such gas storage reservoirs during a tax month, whether such gas is owned by, or injected and withdrawn for, the storage operator. Natural gas storage companies may apply an annual Natural Gas Industry Jobs Retention Credit against their gas storage tax liabilities. The annual tax credit equals \$1,000 multiplied by the number of full-time employees employed by the taxpayer during the year.

Credits Against Tax Liability

An annual tax credit of \$500 (\$41.67 per month) is provided for each business engaged in activities in this State that are subject to the Business and Occupation Tax. The West Virginia Code provides for a variety of other tax credits that may be applied against Business and Occupation Tax liability in some cases. These include the Business Investment and Jobs Expansion Credit, the Credit for Reducing Utility Charges to Low-Income Families, the Industrial Expansion and Revitalization Credit, the Research and Development Projects Credit, and the West Virginia Capital Company Credit. Explanations of these credits may be found in the Tax Credits section.

TELECOMMUNICATIONS TAX

Local exchange carriers engaged in the business of telecommunications within West Virginia are subject to the Telecommunications Tax. The term "telecommunications" includes most means of communication, computer data transmission or other encoded symbolic information transfers. The term does not include commercial broadcast radio or television, cable television or amateur or citizen's band radio.

The tax is equal to 4 percent of gross income attributable to services not subject to competition. Gross income subject to tax is equivalent to the receipts received from local exchange or long distance voice or data communications services but does not include network access, billing or similar services. Gross income subject to tax does not include gross receipts from commodities or services determined by the Public Service Commission of West Virginia to be subject to competition.

Any telephone utility may apply to the Public Service Commission to have their telephone rates no longer subject to regulation. If the Public Service Commission determines that the telephone utility is not subject to workable competition, it is to approve the application. If the application is

denied, the Telecommunications Tax would become applicable to the gross income of the telephone utility.

The West Virginia Code provides for a variety of tax credits that may be applied against Telecommunications Tax liability in some cases. These include the Business Investment and Jobs Expansion Credit, the West Virginia Capital Company Credit, and the Credit for Reducing Telephone Charges to Low-Income Families. Explanations of these credits can be found in the Tax Credits section.

SEVERANCE AND BUSINESS PRIVILEGE TAX

The Severance and Business Privilege Tax is imposed at the rate of 5 percent on persons providing the following services:

1. behavioral health services, which include all health care-related services provided by a behavioral health center, and
2. community care services, which include home and community care services furnished by a provider pursuant to an individual plan of care.

Community care services include senior citizens groups that provide that type of service but do not include services of home health agencies.

The Severance and Business Privilege Tax is imposed on the gross proceeds received from furnishing behavioral health or community care services in West Virginia. Gross proceeds is defined as the value, whether in money or other property, of the sale or lease of tangible personal property or of the services rendered without any deduction for the cost of the property or expenses. Charitable donations and grants are not included in the gross proceeds, but Medicaid and Medicare payments are. Proceeds from this tax are dedicated to the “Medicaid State Share Fund”.

The following deductions can be made from gross receipts before the calculation of the tax:

1. Accrual-based taxpayers may deduct bad debts from their gross receipts to the extent that the amount of the bad debt was included previously in gross receipts upon which the Severance and Business Privilege Tax were paid.
2. Accrual-based taxpayers can reduce gross receipts by the amount of their contractual allowances to the extent included in the amount of gross receipts upon which taxes were previously paid. Contractual allowances are the differences between revenue or gross receipts at established rates and the amounts realized from third party providers under contractual agreements.

An annual tax credit of \$500 (\$41.67 per month) is provided for each business engaged in activities in this State that are subject to the Severance and Business Privilege Tax.

HEALTH CARE PROVIDER TAXES

The Health Care Provider Taxes are imposed on the provision of sixteen different types of health care services and items in West Virginia. The following is a list of those health care services and their respective tax rates:

Ambulatory Surgical Centers	1.75%
Chiropractic Services	1.75%
Dental Services	1.75%
Emergency Ambulance Services	5.50%
Independent Laboratory or X-ray Services	5.00%
Inpatient Hospital Services	2.50%
Intermediate Care Facility Services for the Mentally Retarded	5.50%
Nursing Facilities other than Intermediate Care Facility Services For the Mentally Retarded	5.50%
Nursing Services	1.75%
Opticians' Services	1.75%
Optometric Services	1.75%
Outpatient Hospital Services	2.50%
Physicians' Services (including Psychiatrists and Ophthalmologists)	2.00%
Podiatry Services	1.75%
Psychological Services	1.75%
Therapists' Services	1.75%

The Health Care Provider Taxes are measured by the application of a rate to the gross receipts received from the furnishing of the particular health care services and items. Gross receipts includes all payments, in cash or in kind, from patients, third-party providers and others for the services rendered, including retroactive adjustments under reimbursement agreements with third-party providers. No expenses are to be deducted. Gross receipts that are not related to the furnishing of health care services (i.e., fees received by health care providers for providing expert testimony) and charitable donations are not subject to the Health Care Provider Taxes.

The following deductions can be made from gross receipts before the calculation of the tax:

1. Accrual-based taxpayers may deduct bad debts from their gross receipts to the extent that the amount of the bad debt was included previously in gross receipts upon which the Health Care Provider Taxes were paid.
2. Accrual-based taxpayers, except nursing homes, can reduce gross receipts by the amount of their contractual allowances to the extent included in the amount of gross receipts upon which taxes were previously paid. Contractual allowances are the differences between revenue or gross receipts at established rates and the amounts realized from third party providers under contractual agreements.

Dedication of Revenue

The revenue from the Health Care Provider Taxes, including any interest, additions to tax and penalties and excluding allowable refunds and the cost of administration of these taxes, is to be deposited into a special revenue fund. All appropriations from this special revenue fund, the "Medicaid State Share Fund", must be made by the Legislature.

INSURANCE TAXES AND FEES

The Insurance Premium Tax is collected from every insurance company transacting insurance in West Virginia, based on gross premiums from business in the State, with certain exceptions. The following are exempt from the Premium Tax:

1. fraternal benefit services;
2. farmers' mutual fire insurance companies;
3. health care corporations, and
4. health maintenance organizations.

An Annuity Tax is imposed based on the gross amount of annuity considerations collected by life insurers on business transacted in West Virginia. Annual license fees are also collected from persons acting as insurers and transacting insurance in West Virginia and from insurance agents and brokers. In addition, fees are received for processing of reports and documents. The taxes and fees are administered by and payable to the Insurance Commissioner.

Premium Tax

The Premium Tax is imposed on all insurance companies, except farmers' mutual fire insurance companies, annuity writers, fraternal beneficiary societies and health care corporations and health maintenance organizations. This tax is levied at the rate of 3 percent on gross direct premiums, including dividends, collected and received for the previous calendar year on policies covering residents of or risks located in this State minus any premiums returned to policyholders because of cancellations. Reciprocal insurers pay the tax based upon premiums on business in West Virginia minus any premiums returnable because of cancellation and amounts returned to subscribers or credited to their accounts as savings.

Additional Premium Tax

An additional 1 percent Premium Tax for fire and casualty insurance is imposed, and the revenue from this additional tax is deposited into a special account designated the Municipal Pensions and Protection Fund.

Surcharge on Fire and Casualty Insurance Policies

Every fire and casualty insurance policy holder must pay a surcharge equal to 1 percent of the gross direct premium paid on the policy. The surcharge is to benefit volunteer and part-volunteer fire departments, certain retired teachers and the teacher retirement reserve fund. The policy surcharge will not be subject to premium taxes, agent commissions or any other assessments against premiums. Casualty insurance does not include credit life insurance or credit disability insurance.

The policy surcharge is to be collected by the insurer and remitted to the Insurance Commissioner. A penalty of up to \$100 a day will be imposed if an insurer fails or refuses to collect and remit the policy surcharge to the Insurance Commissioner. The penalty also applies to payments not postmarked by the quarterly due dates. An insurer may be suspended until all surcharge payments and penalties are paid in full.

Fifty percent of the monies collected are to be deposited in the Fire Protection Fund, a special account in the State Treasury. The remaining 50 percent is to be transferred to the Teachers' Retirement System. The State Treasurer must distribute the revenues in the Fire Protection Fund quarterly. Each volunteer fire department or company is to receive an equal share of the revenues deposited in the Fire Protection Fund.

Agents' and Insurer's Licenses and Taxes

All excess line brokers are required to pay a Premium Tax of 4 percent of the gross premiums received. The revenue from this additional tax is deposited in the Municipal Pensions and Protection Fund.

An annual license is required for all agents and brokers. Specific fees are set for such licenses, unless the agent is a nonresident. Nonresident agents' fees equal the fee imposed by the resident state. Nonresident agents for property and casualty insurance may be licensed to solicit business in West Virginia, but all such solicitations must be reported, placed, countersigned and consummated through a duly licensed resident agent of the same insurer.

License Tax and Fees

All companies and persons acting as insurers in West Virginia are required to be licensed except those companies whose only business consists of investigating and settling losses under policies written in West Virginia while duly licensed or those companies who are not transacting new business but are only collecting premiums on policies remaining in force. The fee for an annual license for insurers is \$200. The following is a list of other fees:

Each licensed agent, adjuster, broker, solicitor and service representative	\$25
Receiving and filing annual reports	\$100
Certificate of authority	\$200
Rating organization	\$100
Filing certified copy of articles of incorporation	\$50
Filing copies of charter	\$50
Filing statements preliminary to admission	\$100

BUSINESS TAXES

Filing any additional paper required by law or furnishing copies thereof	\$1
Each certificate of compliance, deposit and valuation copy of report or certificate of condition of company to be filed in any other State	\$15
Each form filing	\$25
Each rate filing	\$25

License Requirements

No insurer may transact insurance business in this State unless it holds a valid license issued by the Commissioner or the insurer

1. formerly held a valid license and is only settling losses associated with lawfully written policies, or
2. is liquidating such assets and liabilities as may have resulted from its former authorized business.

An insurer not transacting new business but continuing collection of premiums on and servicing of policies remaining in force as to residents for risks located in West Virginia is not required to have a license but must pay premium and annuity taxes on said business.

An insurer may not solicit business in another state from offices in this State unless it holds a license authorizing the same kind or kinds of insurance in this State. Any officer, director, agent, representative or employee of any insurer who willfully violates this section is guilty of a misdemeanor and subject to a \$10,000 fine and/or a one-year term in the county jail.

Qualifications for License

To qualify for an insurance license an insurer must

1. be an incorporated stock or mutual insurer or a reciprocal insurer and comply with West Virginia's insurance and Corporate Charter laws,
2. not be owned in whole or in part by any state or foreign government,
3. not be domiciled in a state that does not have reserve requirements that are equal to or greater than those required in West Virginia,
4. be authorized to transact the same kinds of insurance in its state of domicile as it seeks to write in this State,
5. not seek licensure for any kind of insurance not defined by the West Virginia Insurance Code, and
6. not be in arrears to the State for any fees, licenses, taxes, assessments, fines or penalties accrued.

Every insurer transacting insurance in this State must have a license from the Insurance Commissioner except in the following cases:

BUSINESS TAXES

1. transactions for which a license is not required;
2. attorneys-at-law acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
3. transactions in West Virginia related to a policy issued outside this State involving insurance on cargo vessels, their craft or hulls, cargoes, marine builders risk, commercial marine protection and indemnity or other risk, including strikes and war risks, commonly insured under ocean marine forms of policy;
4. transactions in this State involving group life, group accident and sickness or group annuity insurance providing coverage under policies that are recognized by the West Virginia Insurance Code where
 - a. the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business to a group organized for purposes other than the procurement of insurance, where the policy holder is domiciled or otherwise has a bona fide situs, and
 - b. except for group annuities, the insurer complies with West Virginia Code §33..

Any of the following acts by mail, or otherwise by or for an unauthorized insurer, is considered transacting insurance business in this State:

1. making or proposing to make an insurance contract;
2. making or proposing to make, as guarantor or surety, any contract of guarantee or suretyship as a vocation;
3. the taking or receiving of any insurance application;
4. the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance;
5. the issuance or delivery of insurance contracts to residents of West Virginia or to persons authorized to do business in this State;
6. acting, directly or indirectly, in any manner representing or assisting a person or insurer in the transaction of insurance with residents of this State. (This does not apply to full-time salaried employees of a corporation acting in the capacity of an insurance manager or buyer in placing insurance for the corporation);
7. the transaction of any insurance business specifically recognized as such in W. Va. Code Chapter 33, and
8. transacting or proposing to transact any insurance business in substance equivalent to any of the activities described in a manner designed to evade provisions of W. Va. Code Chapter 33.

Annuity Tax

All life insurers who transact insurance in West Virginia are required to pay the Annuity Tax that is based on the gross amount of annuity considerations minus any annuity considerations returned and termination allowances upon group annuity contracts. This tax is levied at the rate of 1 percent of the gross amount.

Fire Marshal Tax

Every insurance company doing business in West Virginia, except farmers' mutual fire insurance companies, must pay in addition to any other taxes, 0.5 percent of the direct net premium receipts on insurance against fire hazards.

Minimum Tax

Any insurer licensed in West Virginia must pay a minimum tax of \$200 for any calendar year. Taxes used in calculating the minimum are those imposed by W. Va. Code §33-3. The minimum tax is to be paid annually on or before March 1.

Credits

1. Companies investing 25 percent of their assets in West Virginia securities are entitled to a credit of 100 percent of the Premium Tax levied.
2. Insurance companies are entitled to a credit against the additional 1 percent Premium Tax levied in W.Va. Code §33-3-14a for costs of examinations incurred pursuant to W.Va. Code §33-2-9.

BUSINESS TAXES

CORPORATION NET INCOME TAX COLLECTIONS

Fiscal Year	Net Revenue
1986-1987	\$63,094,613
1987-1988	54,359,405
1988-1989	112,819,609
1989-1990	147,816,631
1990-1991	148,129,304
1991-1992	107,590,065
1992-1993	107,087,426
1993-1994	114,265,235
1994-1995	145,362,694
1995-1996	156,258,039
1996-1997	160,649,491

BUSINESS FRANCHISE TAX COLLECTIONS

Fiscal Year	Net Revenue
1987-1988	\$50,383,316
1988-1989	58,435,120
1989-1990	73,405,567
1990-1991	75,756,120
1991-1992	74,477,134
1992-1993	71,957,021
1993-1994	70,360,191
1994-1995	73,323,355
1995-1996	78,865,340
1996-1997	90,580,982

BUSINESS TAXES

SEVERANCE TAX COLLECTIONS¹

Fiscal Year	Net General Revenue
1987-1988	\$128,485,692
1988-1989	135,694,102
1989-1990	162,691,417
1990-1991	173,001,651
1991-1992	180,832,694
1992-1993	169,218,009
1993-1994	152,944,572
1994-1995	176,756,209
1995-1996	158,932,334
1996-1997	176,947,493

BUSINESS & OCCUPATION TAX COLLECTIONS

Fiscal Year	Net Revenue
1986-1987	\$471,870,649
1987-1988	181,950,847
1988-1989	124,472,456
1989-1990	165,360,748
1990-1991	191,403,995
1991-1992	186,532,398
1992-1993	184,219,907
1993-1994	211,715,803
1994-1995	196,743,759
1995-1996	190,274,017
1996-1997	179,822,619

¹ Does not include the Additional Tax on Coal for the Benefits of Counties and Municipalities nor the percentage of oil and/or gas severance tax distributed to counties and municipalities.

BUSINESS TAXES

TELECOMMUNICATIONS TAX COLLECTIONS

Fiscal Year	Net Revenue
1987-1988	\$18,012,518
1988-1989	13,295,304
1989-1990	9,971,912
1990-1991	10,593,046
1991-1992	11,319,048
1992-1993	11,429,180
1993-1994	12,021,761
1994-1995	12,477,718
1995-1996	12,865,867
1996-1997	13,229,793

INSURANCE TAX COLLECTIONS

Fiscal Year	Net Revenue
1986-1987	\$45,728,933
1987-1988	47,190,042
1988-1989	48,534,650
1989-1990	52,069,319
1990-1991	52,747,930
1991-1992	56,390,802
1992-1993	59,990,183
1993-1994	62,226,582
1994-1995	64,546,887
1995-1996	68,531,034
1996-1997	71,025,137