



West Virginia Business Franchise Tax

The purpose of this publication is to provide general information on the business franchise tax. This publication is meant to be a source of general information and not a substitute for tax laws or regulations.

Persons and Organizations Subject to the Tax

The West Virginia Business Franchise Tax, imposed by Chapter 11, Article 23 of the West Virginia Code, is a tax on the privilege of doing business in this State. The term "doing business" means any activity of a corporation, partnership or limited liability company which enjoys the benefits and protection of the government and laws of this state.

All corporations, both foreign and domestic (including S corporations), partnerships and limited liability companies are subject to the tax unless specifically exempt by law. However, if an LLC has only one member and has elected to be treated as a single member LLC for federal purposes, the company is not subject to the business franchise tax. Income and expenses are reported by the single member on federal form 1040 and will be included in the federal adjusted gross income reported on the West Virginia individual income tax return.

Tax Base

The measure of the tax is the capital of corporations and is defined as the average of the beginning and ending balances of: 1) the value of common and preferred stock; 2) plus retained earnings; 3) plus paid-in capital or capital surplus; 4) less treasury stock. S corporations include the average of the accumulated adjustments account, other adjustments account and shareholders undistributed taxable income. The capital of partnerships is defined as the average of the beginning and ending balances of the partners' capital accounts. These items of capital are taken from the balance sheet of the Taxpayer's federal tax return as filed with the Internal Revenue Service for the taxable year. Multi state businesses will apportion an amount of capital to West Virginia using a four-factor formula consisting of payroll, property and double weighted sales factors.

Tax Rate

Effective January 1, 2007, the tax rate is 55 cents per \$100 of taxable capital. A taxpayer who is required to file a short period annual tax return is allowed to prorate the tax liability based on the number of months reported on the tax return. There is a minimum tax of \$50. The minimum tax is not prorated.

Filing Periods - Methods of Accounting

The taxable year and method of accounting are the same as those used for federal tax purposes. A corporation that files its West Virginia corporation net income tax return as part of an affiliated group is required to file a consolidated West Virginia business franchise tax return.

Federal Tax Return Information

As part of a full and complete tax return, West Virginia Code § 11-23-14(b) requires the taxpayer to provide a copy of pages one through four of its signed federal corporation income tax return, or its signed federal partnership return as filed with the Internal Revenue Service (Form 1120, 1120A, 1120S, 990T, or 1065). If filing as a member of an affiliated group for federal income tax purposes, but separately for West Virginia, the federal return requirement is satisfied with the attachment of a pro-forma federal document. However, corporations included in a consolidated federal return must provide a copy of pages 1 through 4 of the consolidated federal return; supporting schedules showing the consolidation of its income statement and balance sheets, including schedules supporting eliminations and adjustments; a copy of federal form 851, as filed with the Internal Revenue Service and supporting schedules showing all subsidiary corporations; and a signed statement explaining the differences, if any, between the income statement and balance sheet reported for federal consolidated filing and that reported for West Virginia business franchise tax.

Due Date

A corporation's annual return is due on or before the fifteenth day of the third month after close of taxable year. For partnerships, the return is due on or before the fifteenth day of the fourth month after the close of the taxable year. The filing of the return is required whether or not any tax is due.

Extension of Time for Filing

An extension of time for filing Federal Form 1120, 1120S, 990T, or Form 1065, will automatically extend the time for filing the West Virginia return for the same period as the extension for filing the federal form. An extension of time for filing does not extend the time for payment of tax. Payment of any tax balance due may be made by attaching your remittance to a copy of your federal extension request. To avoid interest and late payment penalties, payment must be received on or before the due date of the return.

Persons and Organizations Exempt From Tax

The following organizations and persons shall be exempt from the business franchise tax:

- For purposes of the business franchise tax, the term “doing business” does not include the activity of agricultural and farming. Therefore, persons or organizations engaged in these types of activities are exempt from the tax.
- Natural persons doing business in this State that are not doing business in the form of a partnership or in the form of a corporation. Such persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons.
- Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: Provided, that this exemption shall not apply to that portion of their capital which is used, directly or indirectly in the generation of unrelated business income (as defined in the Internal Revenue Code) of any such corporation or organization, if the unrelated business income is subject to federal income tax.
- Insurance companies which pay this State a tax upon premiums.
- Production credit associations organized under the provisions of the federal “Farm Credit Act of 1933”.
- Any trust established pursuant to section one hundred eighty-six (29 U.S.C. §186), chapter seven, title twenty-nine of the code of the laws of the United States (enacted section three hundred two (c) of the Labor Management Relations Act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred eighty-five.
- Any credit union organized under the provisions of chapter thirty-one, or any other chapter of the West Virginia Code: Provided, that this exemption shall not apply to corporations or cooperative associations organized under the provisions of article four (§ 19-4-1 et seq.), chapter nineteen of the West Virginia Code.
- Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this State and was created pursuant to the West Virginia Code.
- Any corporation or partnership licensed under article twenty-three [§§ 19-23-1 et seq.], chapter nineteen of the West Virginia Code, to conduct horse or dog racing meetings or a pari-mutuel system of wagering: Provided, that if the corporation or partnership is not exclusively engaged in this activity, only that portion attributable to the activity of conducting a horse or dog racing meeting or a pari-mutuel system of wagering is exempt from the tax.
- Any corporation or partnership operating as a hunting club: Provided, that the corporation or partnership distributes no income or dividends to its owners or stockholders.
- For taxable years beginning after December 31, 2002, certified West Virginia capital companies are exempt from the business franchise tax on that portion of their capital used in providing venture capital to West Virginia businesses.

Estimated Tax

If the business franchise tax liability can reasonably be expected to exceed \$12,000 per year, estimated tax payments are required and are due in four equal installments. A declaration of estimated tax must be filed on or before the fifteenth day of the fourth month of the taxable year. The first installment of estimated tax must be paid with the declaration and the remaining payments are due on or before the fifteenth day of the sixth, ninth and twelfth months of the taxable year.

Assistance may be obtained by calling
Taxpayer Services Division
(304) 558-3333 or 1-800-WVA-TAXS (1-800-982-8297)
A TDD Service is available for the hearing impaired by calling
1-800-2TAXTDD (1-800-282-9833)
To order forms or publications call the automated information system at:
(304) 344-2068 or 1-800-422-2075
Or visit our website: <http://www.wvtax.gov/>