INSTRUCTIONS - FORM WV/CNF-120

Enter beginning and ending tax year dates covered by this return. Attach label provided or clearly print or type your name and address. Make corrections on the label if necessary. Enter West Virginia ID number. If filing under extension, check box and enter extended due date in the space provided. Check applicable box for the return being filed.

BUSINESS DATA SECTION: You must complete the questions asked in this section before going to line 1.

ATTACHMENTS AND STATEMENTS REQUIRED

Attach the additional information and statements required as part of your form WV/CNF-120 if they apply to your filing method.

Attach a copy of pages 1 through 4 of your signed federal return (Form 1120), and schedule M-3 if applicable. If filing separate West Virginia and consolidated federal, attach your pro forma federal, consolidated federal, Form 851 (Affiliation Schedule), plus spreadsheets of the income and expense, and balance sheet entries for EVERY corporation included in the consolidated federal return.

Attach a schedule of other states in which you have property or paid salaries during the taxable year; indicate those states in which your are filing corporate tax returns based on or measured by net income for this taxable year.

Attach a schedule of other states in which you have sales of tangible personal property during the taxable year and in which you are not taxed (e.g. P.L. 86-272); indicate, by state, the amount of sales not subject to tax.

INSTRUCTIONS

Line 1. Enter West Virginia taxable capital from completed Schedule A, Form WV/CNF-120, line 16.

Line 3. Multiply line 1 by tax rate on line 2 and enter result or $50.00 whichever is greater.

When your federal taxable year is a short taxable year, the tax is prorated based on the number of months that are in the short taxable year divided by the number 12.

When your first taxable year for Business Franchise Tax purposes includes a period of time during which you were not subject to the West Virginia Business Franchise Tax, the tax is prorated based on the number of months during the taxable year that you did business in West Virginia divided by the number 12.

Neither the minimum tax of $50.00 nor the capital base can be prorated.

Line 4. Enter result from column 1 line 22 from completed form WV/CNF-120TC. Total amount of credit cannot exceed the tax on line 3.

Line 5. Subtract line 4 from line 3 and enter result on line 5.

Line 6. Enter West Virginia net income from completed Schedule B line 16 form WV/CNF-120.

Line 8. Multiply line 6 by line 7 and enter result. If a negative result enter 0 (zero).

Line 9. Enter result from column 2 line 22 of completed form WV/CNF-120TC. The total amount of credits cannot exceed the net income tax on line 8.

Line 10. Subtract line 9 from line 8 and enter the adjusted net income tax on line 10.

Line 11. Add line 5 and line 10. This is your combined Corporate and Business Franchise Tax liability.

Line 12. Enter combined total of prior year carry forward credits from Corporate Income and Business Franchise Tax returns.

Line 13. Enter Total estimated tax payments.

Line 14. Enter tentative payment(s) made with form WV/CNF-120T.

Line 15. Enter amount from line 26 of the Strategic Research and Development Credit WV/SRDTC-1 and attach schedule to this return.

Line 16. Add lines 12,13,14, and 15; must match total on Schedule C.

Line 17. If line 16 is smaller than line 11 enter amount of tax owed. If line 16 is larger than line 11 enter 0 (zero) and skip to line 22.

Line 18. Determine interest due. For information regarding interest, see the general information on page 8 of this booklet.

Line 19. Determine additions to tax due. For information regarding additions to tax, see the general information on page 8 of this booklet.

Line 20. Enter amount of penalty of estimated tax from form WV/CNF-120U. If exceptions apply enter number in box.

Line 21. Add lines 17 through 20. This is the balance due. Make check payable to West Virginia State Tax Department.

Line 22. If line 16 is larger than line 11, enter amount overpaid. An overpayment may be credited to next year's tax or refunded, either whole or in part.

Line 23. Enter the amount of overpayment to be credited to next year's tax.

Line 24. Enter amount to be refunded.

SCHEDULE - A - COMPUTATION OF CAPITAL

Corporations, Partnerships, and S Corporations must complete this section to determine their capital base subject to the West Virginia Business Franchise Tax. The capital base is the average of the dollar amounts of the beginning and ending balances of certain entries from the balance sheet of your Federal Tax Return as filed or as would have been filed with the Internal Revenue Service for the taxable year.

Corporations and Partnerships not required by Federal law to complete and file a balance sheet are required to complete a pro forma balance sheet in order to calculate their Business Franchise Tax liability. A pro forma balance sheet is the balance sheet that the corporation or partnership would have filed with the Internal Revenue Service had they been required to file one. Corporations complete lines 1 – 4 and lines 8, 9, and 11. S Corporations complete lines 1 – 9 and line 11. Partnerships complete line 10 only. Adding the amounts in column 1 and column 2 and dividing the result by the number 2 determine the average capital in column 3.

EXEMPT ORGANIZATIONS. Corporations and organizations that are exempt from federal tax must pay the Business Franchise Tax on that portion of their capital, which is used, directly or indirectly, in the generation of unrelated business income, as defined by section 512 of the Internal Revenue Code. To determine the amount of your capital that is subject to tax, multiply your capital by the percentage that your total gross unrelated business income is to your total gross income from all activities.

COMPUTATION OF BUSINESS FRANCHISE TAX

Line 12. Taxpayers that own certain tax exempt government obligations and obligations secured by certain residential property located in West Virginia can take an allowance that reduces their capital. See the instructions for Schedule B-1, form WV/CNF-120 to determine if you qualify to take the special allowance. Corporations that qualify for this allowance will have already completed Schedule B-1, for WV/CNF-120. If you do not qualify for the special allowance skip lines 12 and 13 Schedule A form WV/CNF-120. Instead enter the amount from line 11 on line 14.

Line 15. Generally, the apportionment factor used to apportion your income for Corporate Income Tax purposes is used to apportion your capital base for Business Franchise Tax purposes. There are two (2) exceptions. 1) The special apportionment rules for certain motor carriers cannot be used for the Business Franchise Tax. Motor Carriers will need to complete Schedule B, Form WV/CNF-120 APT to determine their apportionment factor for Business Franchise Tax purposes. 2) Taxpayers, exempt from, or not subject to, the West Virginia Corporate Net Income Tax must complete Schedule B form WV/CNF-120APT to determine their apportionment factor for Business Franchise Tax.

APPORTIONMENT FACTOR: Complete form WV/CNF-120APT Schedule B apportionment factors for multi-state corporations. Enter part 1 line 8 or part 3 column 3.

Line 16. Line 14 multiplied by line 15. Enter result here and on line 1, page 1.

SCHEDULE A-1 - SUBSIDIARY CREDIT

A parent taxpayer that filed a separate Business Franchise Tax Return is allowed a credit against its Business Franchise Tax liability for the Business Franchise Tax paid by a subsidiary corporation or by a partnership in which it owns an interest. A corporation that owns 50% or more of the stock of all classes of another corporation is defined to be the parent and the corporation so owned is defined to be a subsidiary corporation. The tax liability of the subsidiary corporation or partnership is first recomputed by determining the tax base of the subsidiary or partnership without the allowance for certain government obligations and obligations secured by certain residential property. The amount of credit is determined by multiplying the recomputed tax liability by the percentage of ownership by the parent. Enter the total from column 4 Schedule A-1 on summary Schedule WV/CNF-120TC line 1 column 1.

SCHEDULE A-2 - TAX CREDIT FOR PUBLIC UTILITIES AND ELECTRIC POWER GENERATORS

IMPORTANT. PLEASE READ. Only public service or utility businesses and taxpayers who generate electric power are eligible for this credit. This credit cannot be taken for taxes paid to municipalities in West Virginia. You must have actually paid Business and Occupation Tax to the West Virginia State Tax Department and be one of the taxpayers mentioned above to be eligible to claim this credit. Line 4. Enter the Business Franchise Tax liability from page 1, line 3 form WV/CNF-120, minus the subsidiary credit claimed on Schedule A-1. Line 5. Enter the total on summary Schedule WV/CNF-120TC, line 2, column 1.

SCHEDULE A-3 - COMMERCIALLY DOMICILED FINANCIAL ORGANIZATION TAX CREDIT

Financial organizations whose business activities take place, or are deemed to take place, entirely in West Virginia are allowed a credit against the West Virginia Business Franchise tax for taxes paid to another state or political subdivision thereof. The credit is the lesser of:

1) The taxes actually paid on or before the filing date of the annual Business Franchise Tax Return to any other state or political subdivision thereof, and which were based upon or measured by the financial organization's capital and paid for the same taxable year; or

2) The tax that would have been paid if the West Virginia Business Franchise Tax rate is applied to the tax base determined under the law of the other state or political subdivision. Any additional payments to other states or political subdivisions and any refunds of such tax made or received with respect to the taxable year, but after the due date of the West Virginia Tax Return for the taxable year (including any extension), shall be accounted for in the taxable year in which such additional payment or refund is made or received.

If line 1 and 2 consist of capital and taxes paid to more than one state, you must attach a schedule detailing, by state, the capital that was subject to tax and the amount of taxes actually paid.

A separate computation of the adjusted Franchise Taxes paid to another state(s) must be made for each state and the combined total transferred to line 4. Attach a supporting schedule of your computations.

Line 5. The lesser of line 1 or line 4, enter here and on form WV/CNF-120TC, line 3 column 1.

SCHEDULE B - ADJUSTMENTS TO FEDERAL TAXABLE INCOME

LINE 1. Enter total taxable income from your federal income tax return form 1120 line 30 or pro forma return. A "pro forma return" is the return that you would have filed if you had filed your federal return on a separate return basis.

LINE 2a. Enter exempt interest or dividends from any state or local bonds or securities from your federal return form 1120 Schedule K or Schedule M-1.

LINE 2b. Attach supporting documentation.

LINE 2c. Attach an itemized schedule of taxes and licenses from line 17 of your federal income tax return form 1120 or pro forma.

LINE 2d. Taxpayers can elect to expense the cost of certain air and water pollution control facilities located in West Virginia in the year in which the cost of acquisition, construction or development was paid or incurred. Eligible air and water pollution control facilities are those located in West Virginia that are "certified pollution control facilities" as defined by Section 169 (d) of the Internal Revenue Code. If this election is made, the total amount of any federal deduction for depreciation or amortization of such facilities is disallowed. The election is made on the return for the year in which the cost is paid or incurred. Once made, the election or non-election is irrevocable.

A taxpayer who reports all income to this state will make the adjustment for the cost of the facilities **on Schedule B line 4h**. The depreciation or amortization on the facilities, including that attributable to cost expensed this year as well as prior years, deducted on the federal return, is entered on **Schedule B line 2d**. A taxpayer who is subject to allocation and apportionment makes the adjustment for the cost of the facilities on Schedule A form WV/CNF-120APT line 10, column 6. The depreciation or amortization on the facilities, deducted on the federal return for this year as well as previous years, is entered on **Schedule A form WV/CNF-120APT lines 11 and 12, column 6.**

LINE 2e. Corporations, which are exempt from federal income tax, are exempt from West Virginia Corporation Net Income Tax. If such corporation has unrelated business taxable income, as defined by Section 512 of the Internal Revenue Code, they must pay West Virginia Corporation Net Income Tax on the unrelated business taxable income. Enter the unrelated business taxable income as reported on Federal Form 990T.

LINE 2f. Enter amount from Federal Form 1120 line 29a.

LINE 2g. If you claim the West Virginia Neighborhood Investment Program Tax Credit, any deduction, decreasing adjustment, or decreasing modification taken on your federal return for any charitable contribution made to such Neighborhood Investment Program and for which the West Virginia credit is claimed, must be added back on line 2g.

LINE 2h. Taxpayers with foreign source income must adjust their federal taxable income by the amount of their taxable income or loss from sources outside the United States. In determining foreign source income, the provisions of Sections 861, 862, and 863 of the Internal Revenue Code apply. Complete the following work sheet.

Foreign Source Income Work sheet

1. Taxable Income from sources outside the United States………………….. ______________
2. LESS: Foreign dividend gross-up………. ______________
3. LESS: Subpart F income………………… ______________
4. West Virginia adjustment………………… ______________

If the amount on line 4 of the work sheet is a positive figure, enter it on Schedule B, line 4g. If it is a negative figure, enter the amount of the loss on Schedule B, line 2h without the negative sign.

Attach copies of Federal Form 1118 to support your calculation. If you did not file Federal Form 1118, you must prepare and file a pro forma Federal Form 1118 to support your adjustment. If you filed a consolidated Federal Form 1118 and file separate or unitary West Virginia returns, attach both the true consolidated and a pro forma Federal Form 1118 to support your adjustment.

LINE 2i. Enter amount of foreign taxes as deducted on your Federal Form 1120.

LINE 2j. Enter Qualified Production Activity Deduction taken under IRC §199.

LINE 4a. Determine the adjustment by completing Schedule B-2. Enter the total amount from line 4.

LINE 4b. Attach supporting documentation.

LINE 4c Attach supporting documentation.

LINE 4d. Enter total and include copy of Federal Form 3800 or 5884 and/or other as applicable.

LINE 4e. Enter total Schedule C line 15 Federal Form 1120.

LINE 4f. Enter total Schedule C line 14 Federal Form 1120.

LINE 4g. See instructions for Schedule B line 2h.

LINE 4h. See the instructions for line 2d.

LINE 4i. A decreasing adjustment to federal taxable income is allowed for employer contributions to a medical savings account established pursuant to W VA Code § 33-16-15, to the extent included in federal taxable income, less any portion of the employer's contributions withdrawn for purposes other than payment of medical expenses. The amount taken as a decreasing adjustment may not exceed the maximum amount that would have been deductible from the corporation's federal taxable income if the aggregate amount of the corporation's contributions to individual medical savings accounts established under W VA §Code 33-16-15 had been contributions to a qualified plan as defined under the Employee Retirement Income Security Act of 1974 (ERISA), as amended.

LINE 6. Taxpayers that own certain tax-exempt government obligations and obligations secured by certain residential property located in West Virginia can take a special allowance that further reduces federal taxable income. Complete Schedule B-1 to determine the amount of the allowance.

LINE 7. Total line 5 and line 6.

LINE 8. Line 1 plus line 3 minus line 7.

LINE 9. Form WV/CNF-120APT; Schedule A, line 9, column 5.

LINE 10. Subtract line 9 from line 8.

LINE 11. Complete Schedule B on form WV/CNF-120APT and enter result of part 1 line 8, part 2, or part 3 column 3.

LINE 13. Complete Schedule A on form WV/CNF-120APT; enter result on line 13 here.

LINE 15. Complete Schedule NOL. Enter total of column 5.

SCHEDULE B-1 - ALLOWANCE FOR GOVERNMENTAL OBLIGATIONS/OBLIGATIONS SECURED BY RESIDENTIAL PROPERTY (11-24-6(f))

Taxpayers that own certain tax exempt government obligations and obligations secured by certain residential property located in West Virginia can take a special allowance that further reduces federal taxable income. Complete WV/CNF-120 Schedule B-1 to determine the amount of the allowance.

The value of these obligations and loans is determined using the average of the monthly beginning and ending account balances. These account balances are determined at cost in the same manner that such obligations, investments and loans are reported on the balance sheet of your federal income tax return.

SCHEDULE B-1

LINE 1, **2, 3, and 4.** Attach copy of work sheets supporting the calculation of average monthly balance.

LINE 6. Average of beginning and ending balance of line 15 Schedule L federal form 1120.

LINE 8. Adjusted income Schedule B line 1 plus line 3 minus line 5 plus Schedule A form WV/CNF-120APT lines 10, 11, and 12.

SCHEDULE B-2 - MODIFICATION FOR GAINS FROM SALE OR EXCHANGE OF PROPERTY ACQUIRED PRIOR TO JULY 1, 1967

Gain from the sale or other disposition of property acquired prior to July 1, 1967 is allowed as a decreasing adjustment to federal taxable income. The adjustment cannot exceed the lesser of either:

(1) The gain reported on the federal return; or
(2) The difference between the fair market value of the property and the adjusted basis of the property for federal income tax purpose on July 1, 1967.

No adjustment is allowed for property acquired after June 30, 1967 or where a loss occurs. This adjustment must be calculated separately for each asset sold.

Determine the adjustment by completing Schedule B-2. Enter the total amount from line 4 on Schedule B line 4a.

SCHEDULE B-3- CORPORATE INCOME TAX-COMMERCIALLY DOMICILED FINANCIAL ORGANIZATIONS TAX CREDIT (11-24-24)

Financial organizations whose business activities take place, or are deemed to take place, entirely in West Virginia, are allowed a credit against the West Virginia Corporation Net Income Tax for taxes paid to another state or political subdivision thereof. The credit is the lesser of:

(1) The taxes actually paid on or before the filing date of the annual Corporation Net Income Tax Return to any other state or political subdivision thereof, and which were based upon or measured by the financial organization's net income and paid for the same taxable year; or

(2) The tax that would have been paid if the West Virginia Corporation Net Income Tax rate is applied to the tax base determined under the law of the other state or political subdivision.

Any additional payments to other states or political subdivisions and any refunds of such taxes made or received with respect to the taxable year, but after the due date of the West Virginia Corporation Net Income Tax Return for the taxable year (including an extension), shall be accounted for in the taxable year in which such additional payment or refund is received.

If line 1 and line 2 consist of income and taxes paid to more than one state, you must attach a schedule detailing, by state the income that was subject to tax and the amount of taxes actually paid.

A separate computation of the adjusted income taxes paid to another state(s) must be made for each state and the combined total transferred to line 4. Attach a supporting schedule of your computations.

SCHEDULE C – SCHEDULE OF TAX PAYMENTS (WILL BE APPLIED TO BUSINESS FRANCHISE TAX FIRST)

Use this schedule to list any corporation net income/business franchise tax payments made which the taxpayer is applying to this return. List the following for each payment: name of corporation making payment; West Virginia Account Identification Number; date of payment; type of payment (estimated payment, including application of overpayment from prior year, and extension payments made with a tentative return); amount of payment. Attach an additional sheet listing payments if the taxpayer paid more than nine payments. Also, use this schedule to list the refundable credit. The total amount of payments, and/or refundable credit must equal the amount reported on page 1, line 16.

NOTE: The total application of prior year credit must equal the amount on page 1, line 12. The total estimate payments must equal the amount on page 1, line 13 and the total extension payments made on a tentative return must equal the amount on page 1, line 14.

SCHEDULE NOL – CORPORATE INCOME TAX – WEST VIRGINIA NET OPERATING LOSS CARRY FORWARD CALCULATION (11-24-6 (d))

Who should complete Schedule NOL. All corporations claiming a net operating loss carry forward deduction on Schedule B line 15 of their West Virginia Corporate Income Tax Return (Form WV/CNF-120), must complete this schedule to support their net operating loss deduction. Schedule NOL is not a claim for refund, but is merely a calculation schedule to support the net operating loss carry forward deduction.

For taxable years ending prior to June 30, 1988 a net operating loss deduction could be claimed by a corporation entitled to claim a net operating loss deduction on its federal income tax return. The amount of the federal net operating loss deduction had to be adjusted to determine the amount of the allowable West Virginia net operating loss deduction.

For taxable years ending after June 30, 1988 West Virginia Corporation Net Income tax law was revised to provide for a West Virginia net operating loss deduction to be used to reduce West Virginia taxable income of a corporation. The revision is effective for all taxable years ending after June 30, 1988 and applied to all loss carry over from the taxable year ending on or before June 30, 1988.

Any amount claimed as a federal net operating loss deduction must be added back to federal taxable income on West Virginia Schedule B, line 2f of Form WV/CNF-120. The West Virginia net operating loss carry forward deduction is entered on Schedule B line 15.

Taxpayers now have a West Virginia election as to the carry back or carry forward of the West Virginia net operating loss deduction. <u>For losses incurred in taxable years beginning after August 5, 1997, the carry back period is 2 years and the carry forward period is 20 years. If the election is made to not carry back any part of the loss, the carry forward period is 20 years. For losses incurred in taxable years beginning on or before August 5, 1997, the carry back period is 3 years and the carry forward period is 15 years.</u>

A net operating loss deduction of a multi-state corporation is subject to West Virginia allocation and apportionment rules.

The West Virginia net operating loss deduction is limited to net operating losses incurred by a corporation which did business in West Virginia and filed Corporation Net Income Tax Returns in prior taxable years.

The amount of net operating loss deduction available to an affiliated group, which elects for the first time to file a consolidated West Virginia Corporation Net Income Tax Return, for a taxable year ending after July 1, 1988, is limited to the net operating losses incurred by members of the affiliated group which did business in West Virginia and filed separate West Virginia returns in prior years.

A West Virginia net operating loss deduction will not be allowed for net operating losses of those members of the affiliated group which did no business in West Virginia in prior taxable years and were not required to file West Virginia Corporate Income Tax Returns.

SRLY RULES. The separate return limitation years (SRLY) rules set forth in Treasury Regulation §1.1502 apply in determining the allowable West Virginia net operating loss deduction.

When the SRLY rules apply, a member of an affiliated group's net operating loss carried forward from its separate return year can only offset that portion of the taxable income attributable to that member of the group.

Schedule NOL is designed to support the claiming of a West Virginia net operating loss carry forward deduction by providing information on the year of the loss and how the loss was/is being used. Enter on Schedule NOL only those loss years that give rise to the current taxable years net operating loss carry forward deduction.

Column 1 Year of loss. Enter in column 1 the applicable tax year ending date(s) for the year(s) that you had net operating loss(es).

Column 2 Amount of West Virginia net operating loss. Enter the amount of West Virginia net operating loss that corresponds to the year of the loss shown in column 1.

Column 3 Amount carried back to years prior to loss year. Enter the total amount of loss for the taxable year entered in column 1 that was carried back to a year or years prior to the year of the actual loss.

Column 4 Amount carried forward to years prior to this year. Enter the total amount of loss for the taxable year entered in column 1 that was carried forward to a year or years prior to the current taxable year.

Column 5 Amount being used this year. Enter the amount of loss for the taxable year entered in column 1 that is being used to offset West Virginia taxable income for the current taxable year.

Column 6 remaining unused net operating loss. Enter the amount of loss for the taxable year entered in Column 1 that remains to be carried to a taxable year subsequent to the current taxable year.

Total Net Operating Loss Carry Forward Deduction for Current Taxable Year. The amount of the West Virginia net operating loss carry forward deduction claimed on Schedule B line 15 form WV/CNF-120 of the current year's tax return must equal the sum of column 5 Schedule NOL. In no instance may the West Virginia net operating loss carry forward deduction reduce West Virginia taxable income below zero.

Net operating loss carry backs. Generally, a taxpayer having a net operating loss must first carry back that loss to the two (2) preceding tax years before carrying the loss forward. A refund initiated by a net operating loss carry back must be claimed within 3 years from the original due date of the return for the loss year (with regard to an extension) by the filing of Form WV/CNF-139.

<u>**Special legislative changes made during 1993 have limited the amount of net operating loss that can be carried back when the loss is incurred in a taxable year beginning after December 31, 1992. No more than $300,000 of net operating loss from any taxable year beginning after December 31, 1992 may be carried back to any previous taxable year. No change was made in the loss carry forward rules or the amount of loss that can be carried back from a taxable year beginning before December 31, 1992.**</u>

FORM WV/CNF-120APT – ALLOCATION AND APPORTIONMENT FOR MULTI STATE CORPORATIONS

Enter beginning and ending tax year dates covered by this return. Print or type your name, and West Virginia ID number.

SCHEDULE A - ALLOCATION OF NON BUSINESS INCOME

If your business activities take place both within and without West Virginia and you are also taxable in another state, certain items of nonbusiness income that are included in federal taxable income are directly allocated. All other income must be apportioned.

Business income arises from transactions and activities in the regular course of the corporation's trade or business, and includes income from tangible and intangible property if the acquisition, management or disposition of the property constitutes integral parts of the corporation's trade or business.

Nonbusiness income includes all income that is not properly classified as business income less all expenses attributable to the production of this income. Nonbusiness income is allocated to West Virginia if (1) the corporation's commercial domicile, the principal place from which the trade or business is managed, is located in West Virginia, or (2) property creating the nonbusiness income is utilized in West Virginia. Nonbusiness income from real property is allocated to West Virginia if the property is located in West Virginia. Nonbusiness income from tangible personal property is allocated to West Virginia if the property is utilized in this state or the property was located in West Virginia at the time of its sale. Nonbusiness income from intangible personal property is allocated to West Virginia if the corporation's commercial domicile is located in West Virginia, or, in the case of patents and copyrights, if they are used in West Virginia.

For a detailed discussion of allocation of nonbusiness income, you may request a copy of Publication TSD-392, “Corporation Net Income Tax Nonbusiness Income”, by contacting our taxpayer services division.

Determine nonbusiness income allocated to West Virginia and outside West Virginia by completing form WV/CNF-120APT Schedule A. <u>Only those types of nonbusiness income listed on Schedule A-APT can be allocated. Any other types of income that the corporation classifies as nonbusiness must be apportioned.</u>

LINE 8. To determine the amount of partnership income/loss allocable to West Virginia, complete Schedule P. Separate schedules must be completed for each partnership in which you have an interest. Combine the amounts from each schedule, and enter the appropriate amounts here.

LINE 9. Enter the amount from Column 5, Line 9, Schedule A on Schedule B Line 9 Form WV/CNF-120.

LINE 13. Enter the amount from Column 6, Line 13, Schedule A on Schedule B Line 13 Form WV/CNF-120.

SCHEDULE B - APPORTIONMENT FORMULA

If your business activities take place both within and without West Virginia and you are also taxable in another state, all net income, after deducting those items of nonbusiness income allocated on Schedule A form WV/CNF-120APT must be apportioned to West Virginia by using the appropriate apportionment formula.

Special apportionment formulas apply to motor carriers and to financial organizations. If you are filing for a financial organization, follow the apportionment instructions for Schedule B-APT, part 3. If you are filing for a motor carrier, follow the apportionment instructions for Schedule B-APT, part 2.

Multi-state corporations will use the standard apportionment formula of payroll, property and sales, with the sales factor double weighted, and will complete Schedule B-APT parts 1, 2, and 3 as applicable.

Petitioning for an alternate method of apportionment. To use an alternate method of allocation and apportionment, you must petition the Tax Commissioner to use some other basis to determine your taxable net income. Your petition for an alternate method must be filed by no later than the normal due date of your return.

You must receive written permission to use an alternate apportionment method before filing your return. Permission will only be granted if you can show that the statutory formula does not properly reflect your taxable income, and if the alternate method properly and fairly shows your West Virginia taxable income.

Your petition should include your name and address; your state of incorporation and principal place of business; a description of the kind(s) of business in which you are engaged; a detailed statement of how sales are made in West Virginia; a computation of your West Virginia taxable income using the statutory apportionment formula and using your proposed alternate formula; and a summary of the facts that support your position.

Send your petition to West Virginia State Tax Department, Internal Auditing Division, Corporate & Franchise Tax Unit, PO Box 1202, Charleston, WV 25324-1202.

MULTI-STATE CORPORATIONS – FOUR FACTOR FORMULA

To determine your West Virginia apportionment percentage, first determine the following factors.

Property Factor. Property includes all real and tangible personal property owned or rented and used during the taxable year to produce business income. Property used in connection with the items of nonbusiness income allocated in Schedule A shall be excluded from the factor.

Property must be included in the property factor if it is actually used or is available for or capable of being used during the taxable year. Property held as reserves, standby facilities or reserve sources of materials must be included. Property or equipment under construction (except goods in process that can be inventoried) must be excluded until it is actually used to generate business income. Movable property, such as tools, construction equipment and trucks, used both within and without West Virginia, shall be included in the numerator of the fraction on the basis of total time within the state during the taxable year.

Property owned is valued at original cost. Property rented is valued at eight times the net annual rental rate. Leasehold improvements are considered property owned and are included at their original cost. Generally, original cost is the basis of the property for federal income tax purposes at the time of acquisition and adjusted by subsequent capital additions or improvements and partial dispositions by reason of sale, exchange, abandonment, etc. As a general rule, property is included in the factor by averaging its values at the beginning and ending of the taxable period. However, the Tax Commissioner may require or allow averaging by monthly values if such method is required to properly reflect the average value of the taxpayer’s property for the taxable year.

Determine the property factor by entering the appropriate amounts in line 1. Enter West Virginia property in column 1 and property everywhere in column 2.

LINE 1. Divide column 1 by column 2 enter result in column 3. State the result as a decimal and round to six (6) places after decimal.

LINE 2. Payroll Factor. The payroll factor shall include the total amount of compensation paid to employees during the taxable year. The total amount paid is determined upon the basis of the taxpayer’s accounting method for federal income tax purposes. If you have adopted the accrual method of accounting for federal purposes, all compensation shall be deemed to have been paid. Compensation may be included in the payroll factor by use of the cash basis only if you have permission from the Tax Commissioner for an alternate method of apportionment. Compensation means wages, salaries, commissions and other forms of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classified as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Do not include compensation paid to employees engaged exclusively in an activity that generates nonbusiness income that you allocated in Schedule A Form WV/CNF-120APT.

The **denominator** of the payroll factor is the total compensation paid by the taxpayer during the taxable year, as shown on the federal income tax return filed with the Internal Revenue Service and as reflected in the schedule of wages and salaries and that portion of the cost of goods sold which reflect compensation.

The **numerator** of the payroll factor is the total amount paid in this state during the taxable year by the taxpayer for compensation. Compensation is paid in this state if any of the following tests, applied consecutively, are met: (A) The employee’s service is performed entirely within this state; (B) The employee’s service is performed both within and without this state, but the service performed without this state is “incidental” to the employee’s service within this state (the word incidental means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction); (C) If the employee’s services are performed both within and without this state, the employee’s compensation will be attributed to this state: (1) If the employee’s base of operations is in this state; or (2) If there is no base of operations in any state in which part of the service is performed, but the place from which the service is directed or controlled is in this state; or (3) If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employees residence is in this state. Base of operation is the place from which the employee starts their work and to which they customarily return in order to receive instructions or communications from customers or others, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of their trade or profession at some other point or points.

Determine the payroll factor by entering the appropriate amounts on line 2. Enter West Virginia payroll in column 1 and payroll everywhere in column 2.

LINE 2. Divide column 1 by column 2 enter the result in column 3. Round to six (6) places after the decimal.

Sales Factor. The term "sales" means all gross receipts of the taxpayer that are business income. Thus, the sales factor includes all gross receipts derived from transactions and activity in the regular course of your trade or business, less returns and allowances. Do not include interest or dividends from obligations of the United States government, which are exempt from taxation in West Virginia, or gross receipts from an activity that produced nonbusiness income that you allocated in Schedule A Form WV/CNF-120APT.

The **denominator (column 2)** of the sales factor includes all gross receipts derived from transactions and activity in the regular course of your trade or business that was reflected in your gross income reported and as appearing on your federal income tax return unless otherwise excluded. <u>Sales of tangible personal property delivered or shipped to a purchaser within a state in which you are not taxed (e.g. under Public Law 86-272) are to be excluded from the denominator.</u>

The **numerator (column 1)** of the sales factor includes all gross receipts attributable to West Virginia and derived from transactions and activity in the regular course of your trade or business. All interest income, service charges or time-price differential charges incidental to such gross receipts must be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

SALES OF TANGIBLE PERSONAL PROPERTY. Gross receipts from sales of tangible personal property are in West Virginia: (1) If the property is received in West Virginia by the purchaser (except sales to the United States government) regardless of the F.O.B. point or other conditions of sales; or (2) If the property is shipped from an office, store, warehouse, factory or other place of storage in West Virginia and the purchaser is the United States government.

Sales within West Virginia are generally determined on a destination basis. If the purchaser picks up or otherwise receives the property in West Virginia, the sale is treated as taking place in this state. If the property is delivered by common carrier or other means of transportation, the place at which the property is received after all transportation is completed is the place where the sale took place. Direct delivery in West Virginia, other than for purposes of transportation, to a person or firm designated by a purchaser, constitutes delivery to the purchaser in West Virginia regardless of where title passes or other conditions of sale. Direct delivery outside West Virginia, to a person or firm designated by a purchaser, does not constitute delivery to a person in this state.

OTHER SALES.. Gross receipts from transactions other than sales of tangible personal property are attributable to West Virginia: (1) If the income producing activity which gives rise to the receipts is performed entirely in West Virginia: or (2) If the income producing activity is performed both in and outside West Virginia and a greater portion of the income producing activity is performed in this state than in any other state, based on cost of performance; or (3) If the sale constitutes business income to the taxpayer, or the taxpayer is a financial organization subject to the special apportionment rules. Refer to West Virginia Code § 11-24-7 for a discussion of income producing activity and cost of performance.

Gross receipts from the sale, lease, rental or licensing of real property are in West Virginia if the real property is located in this state. Gross receipts from the rental, lease or licensing of tangible personal property are in West Virginia if the property is located in this state. If such property is both within and without West Virginia during the rental, lease or licensing period, gross receipts attributable to West Virginia shall be determined based upon the total time within the state during the taxable year. Gross receipts for the performance of personal services are in West Virginia if such services are performed in this state.

Determine the sales factor by entering the appropriate amount on line 3. Enter West Virginia sales in column 1 and sales everywhere in column 2.

Line 3 Column 2. TOTAL SALES*.* This amount, when added to the total gross nonbusiness income, as shown on Schedule A, column 1, must equal the sum of your items of gross income as reported on your federal income tax return. Any differences must be noted and explained in an attachment to your return.

$______________ Sum of gross income items on federal return.

$ ______________ Minus total allocated income (Schedule A, column 1).

$______________ Equals line 3, column 2, Schedule B.

Line 4. Enter the total gross receipts from sales of tangible personal property delivered or shipped to a purchaser within a state in which you are not taxed (e.g. Public Law 86-272). This is the throw out rule per W.Va. Code §11-24-7(e)(11)(B) and §11-23-5(l)(2).

Line 5. In Column 1, enter the amount from line 3. In Column 2, subtract line 4 from line 3 and enter the difference. Then divide Column 1, line 5 by Column 2, line 5 and enter the result in Column 3, line 5. State the result as a decimal and round to six (6) places after the decimal.

Line 6. Enter Column 3, line 5 again.

Line 7. Add Column 3, lines 1, 2, 5, and 6 and enter the sum in Column 3.

Line 8. Divide the six (6) digits decimal from Column 3, line 7 by the number 4, reduced by the number of factors, if any, showing zero in Column 2, lines 1, 2, 5, or 6. Enter the six-digit decimal fraction from Column 3, line 8 on WV/CNF-120 Schedule A line 14 and Schedule B line 11.

MOTOR CARRIERS — SPECIAL SINGLE FACTOR FORMULA

Part 2. Vehicle Miles. Motor carriers of property or passengers are subject to special apportionment rules . Motor carriers must apportion their business income by using a single factor formula of vehicle miles.

<u>The special apportionment formula for motor carriers is to be used for the Corporation Net Income Tax only. The special rules do not apply to the West Virginia Business Franchise Tax</u>.

A motor carrier is any person engaged in the transportation of passengers and/or property for compensation by a motor propelled vehicle over roads in West Virginia, whether on a scheduled route or otherwise. The term "vehicle miles" means the operations of a motor carrier over a distance of one mile.

The special apportionment formula for motor carriers does not apply if: (A) The motor carrier neither owns nor rents any real or tangible personal property located in this state, has made no pick ups or deliveries within this state, and has traveled less than 50,000 miles in this state during the taxable year; or (B) The motor carrier neither owns nor rents any real or tangible personal property located in West Virginia, except vehicles, and made no more than 12 trips into or through this state during the taxable year. Under either (A) or (B), the mileage traveled in West Virginia may not be more than five percent (5%) of the total vehicle miles traveled in all states during the taxable year.

Determine the apportionment factor by entering the appropriate vehicle miles for West Virginia in Column 1, and vehicle miles everywhere in Column 2.

Divide Column 1 by Column 2, and enter the result in Column 3. State the result as a decimal fraction and round to six (6) places after the decimal. Enter the six (6)-digit decimal fraction from column 3 on Schedule B line 11 of Form WV/CNF-120

FINANCIAL ORGANIZATIONS – SPECIAL SINGLE FACTOR FORMULA SCHEDULE B FORM WV/CNF-120APT

PART 3. Gross Receipts. Financial organizations subject to apportionment must apportion their business income by using a single factor gross receipts formula. This special apportionment rule applies to both the West Virginia Corporation Net Income Tax and Business Franchise Tax.

A financial organization is any holding company or regulated financial corporation or subsidiary thereof, or any corporation deriving more than 50% of its gross receipts from one or more of the following:

(1) Making, acquiring, selling or servicing loans or extensions of credit.

(2) Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit.

(3) Operating a credit card business.

(4) Rendering estate or trust services.

(5) Receiving, maintaining or otherwise handling deposits.

(6) Engaging in any other activity with an economic effect comparable to any of the above.

Commercially domiciled financial organizations. Financial organizations with their commercial domicile in West Virginia may not apportion their capital or business income when they engage in multi-state activities. All of their capital or business income shall be allocated to West Virginia without apportionment. Financial organizations with their commercial domicile in West Virginia will instead be allowed a credit against their tax liability for corresponding taxes actually paid to other states See form WV/CNF-120APT, Schedule B, part 3.

The commercial domicile of a financial organization is the place designated as its principal office with its regulating authority.

Financial organizations not commercially domiciled in West Virginia. A financial organization not commercially domiciled in West Virginia shall apportion their capital and business income by means of a single factor gross receipts apportionment formula if it regularly engages in business in West Virginia. A financial organization not having its commercial domicile in West Virginia is presumed to be regularly engaging in business in West Virginia if during any year it obtains or solicits business with 20 or more persons within West Virginia, or the sum of its gross receipts attributable to sources in West Virginia equals or exceeds $100,000.00.

Gross receipts from the following ownership interest (and certain related activities) will not be considered in determining whether a financial organization is subject to taxation.

(1) An interest in a real estate mortgage investment conduit, a real estate investment or a regulated investment company.

(2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates or interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates.

(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan, and in which the payment obligation were solicited and entered into by a person that is independent and not acting on behalf of the owner; or an interest in the right to service or collect income from such a loan or asset; or

(4) An amount held in an escrow or trust account with respect to property described above.

However, if a financial organization is subject to taxation when gross receipts from these interests are not considered, such receipts must then be included when determining the amount of taxes owed.

Neither the numerator nor the denominator of the gross receipts factor should include gross receipts from obligations and certain loans on which you claimed the special allowance in Schedule B-1 Form WV/CNF-120.

Methods of filing. Both the West Virginia business franchise tax and the corporation net income tax are separately imposed upon business entities. The law presumes that each taxpayer subject to tax will file a separate return. However, an affiliated group that includes one or more financial organizations may file a consolidated return as long as it complies with the following rules.

1. The affiliated group of which the financial organization is a member must file a federal consolidated income tax return for the taxable year.
2. All members of the affiliated group included in the federal consolidated return must consent to being included in the consolidated return. The filing of a consolidated return is proof of consent.
3. The West Virginia taxable capital or income of the group is the sum of:

A. The pro forma West Virginia taxable capital, or income as the case may be, of all financial organizations having their commercial domicile in West Virginia; plus,
B. The pro forma West Virginia taxable capital, or income as the case may be, of all financial organizations not having their commercial domicile in West Virginia; plus,
C. The pro forma West Virginia taxable capital, or income, as the case may be, of any member of the federal affiliated group that is subject to special industry apportionment, such as motor carriers; plus
D. The pro forma West Virginia taxable capital, or income, as the case may be, of all other members included in the federal consolidated income tax return, except any member that is specifically exempt from taxation under the business franchise tax law or the corporation net income tax law.

When filing a consolidated return that includes pro forma calculations for financial organizations and other statutory groups, the following supporting documentation shall be included to substantiate the filing.

1. A copy of pages 1 through 4 of the Federal Consolidated Income Tax Return, Form 851, and Form 7004, filed for the taxable year by the affiliated group,
2. A consolidated balance sheet in columnar form for both the beginning and end of the taxable year, showing the inclusions and eliminations, whether they are positive or negative, for each member of the affiliated group included in the federal consolidated return,

3. A consolidated income and expense statement, in columnar form, showing for each corporation included in the federal consolidated return its portion of the income and deductions and any eliminations or adjustments necessary to properly reflect the consolidated federal taxable income,

4. A schedule listing, by statutory groups, i.e. commercially domiciled financial organizations, non-commercially domiciled financial organizations, special industries, exempt member(s), and all others, the names and federal employers identification numbers of each member of that group.

5. A pro forma combined balance sheet, in columnar form for both the beginning and end of the taxable year, showing the inclusions and eliminations, for each member, for each statutory group,

6. A pro forma income and expense statement, in columnar form, showing for each member included in the statutory group, its portion of the income and deductions and any eliminations or adjustments necessary to properly state the statutory groups federal taxable income,

7. Supplemental schedules, in columnar form, showing, by statutory grouping, and each member included in the statutory group, the following information:

A. Itemization of the adjustments increasing and decreasing federal taxable income,
B. Itemization of the allocation of nonbusiness income,
C. Itemization of the apportionment factor(s),
D. Itemization of the amount of taxes paid to another state or political subdivision for which the commercially domiciled financial organization tax credit is claimed,
E. Itemization of the amount of net operating loss deductions claimed, and
F. Itemization of the numerator and denominator of the allowance for certain government obligations and obligations secured by residential property, and the amount of interest giving rise to the allowance; and,

8. A summary schedule showing the combination of the various statutory groups to establish the consolidated group's West Virginia taxable capital and taxable income.

Tax credits claimed on the special consolidated return. If any member of the consolidated return is allowed to claim a tax credit against its tax liability for payment of any other tax, the amount of the credit allowed may not exceed that member's proportionate share of the affiliated groups tax liability, as shown on a pro forma tax return for that member of the group.

Corporations who have a non-domiciled financial organization filing requirement in addition to the regular filing requirement are required to file two completely separate CNF-120 form schedules, one for their total non-financial business activities and one for their non-domiciled financial activites. The results of these separate filings can then be added and summarized on the front page of the tax return. A return absent these completed schedules would not be accepted as valid filing.

SCHEDULE-PARTNERSHIP INCOME LOSS

Use this schedule to determine the amount of taxable income or loss received from one or more partnerships in which you are an investor.

A corporation's share of partnership income, gain, loss, and deduction is allocable to West Virginia to the extent it was derived from partnership activity in West Virginia. The corporation's share of the partnership income/loss must be modified by the increasing and decreasing adjustments shown on West Virginia Schedule B.

If the partnership is active only in West Virginia, the corporate partner's entire share of the partnership income, gain, loss, and deductions, after the required modifications shown on West Virginia Schedule B, is allocated to West Virginia.

If the partnership has activity in more than one state, the corporate partner's share of the partnership income, gain, loss, and deductions, after modification, is subject to the allocation and apportionment provisions of West Virginia Code § 11-24-7. Apportionment is made by using the partnership's property, payroll, and sales factors.

If the partnership is eligible to claim West Virginia tax credits that flow through the partnership to the partners, attach a statement identifying the credit(s) and the amount of the corporation's share of the credit(s).

A separate schedule must be completed for each partnership in which you are a partner. Income, gain, loss, and deductions from more than one partnership may not be combined on a single schedule. However, the partnership income/loss from each separate Schedule P is combined into a single entry on West Virginia Schedule P, line 8, part 1.

Copies of your federal Schedule K-1 from each partnership must be attached to substantiate the distribution.

Part 1. Computation of Income/Loss Reportable to West Virginia.

Lines 1 through 4. Enter only the corporation's share of these items.

Lines 6 and 7. See the instructions for West Virginia Schedule B, WV/CNF-120.

Line 8. If the partnership is active only in West Virginia, enter this amount also on line 14 and skip lines 9 through 13.

Complete Parts 2 and 3 only if the partnership is active in more than one state.

Part 2. Allocation. See the information and instructions for completing West Virginia Schedule A, WV/CNF-120APT The amount entered in Part 2 should only include the corporation's share of these items of nonbusiness income and related expenses.

Part 3. Apportionment. See the information and instructions for completing West Virginia Schedule B, WV/CNF-120APT <u>The figures to be entered in columns 1 and 2 are for the partnership not the corporation's proportionate share.</u> The property factor includes the property of the partnership owned, leased or rented and used in the production of business income. The payroll factor includes salaries, wages, commissions and any other form of remuneration paid to partnership employees and reflected on the partnership's Federal Form 1065. The sales factor includes all gross receipts of the partnership except those subject to allocation that were reflected in the partnership's federal gross income and reported on the partnership's Federal Form 1065.