



West Virginia Tax Commission

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TAXATION OF FINANCIAL ORGANIZATIONS UNDER WEST VIRGINIA'S BUSINESS FRANCHISE TAX AND CORPORATION NET INCOME TAX

The West Virginia business franchise tax and corporation net income tax are imposed upon all financial organizations that are regularly engaging in business in West Virginia. Corporations or partnerships, that are financial organizations that are regularly engaging in business in West Virginia must file completed business franchise tax and corporation net income tax returns following special rules established for financial organizations.

The purpose of this publication is to provide taxpayers with information to help in determining if (1) they meet the West Virginia definition of a financial organization, (2) they are regularly engaging in business in West Virginia, and (3) what methods are available when filing business franchise tax and corporation net income tax returns.

ARE YOU A FINANCIAL ORGANIZATION?

The law defines a "financial organization" broadly to include more than just traditional financial institutions such as banks and savings and loan institutions. Just because you are not a traditional financial organization, does not mean that you are not a financial organization for purposes of West Virginia's business franchise tax and corporation net income tax.

If the answer is yes to any of the following questions, you are considered a financial organization under West Virginia law.

1. Are you a holding company or a subsidiary thereof registered under the federal bank holding company act of 1956?
2. Are you a holding company or a subsidiary thereof registered as a savings and loan holding company other than a diversified savings and loan holding company?
3. Are you an institution, the deposits, shares or accounts of which are insured under the federal deposit insurance act, or by the federal savings and loan insurance corporation?
4. Are you an institution that is a member of a federal home loan bank?
5. Are you a bank or thrift institution incorporated or organized under the laws of the State of West Virginia that is engaged in the business of receiving deposits?
6. Are you a production credit association organized under 12 U.S.C. 2071?
7. Are you an edge act corporation organized under 12 U.S.C. 611 through 631?
8. Are you a federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101)?
9. Do you derive more than fifty percent (50%) of you gross business income from one or more of the following activities?
 - A. Making, acquiring, selling or servicing -
 - A1. secured or unsecured consumer loans?
 - A2. installment obligations?
 - A3. mortgages or other loans secured by real or tangible personal property?
 - A4. credit card loans?
 - A5. secured and unsecured commercial loans of any type?
 - A6. loans arising in factoring?
 - B. Leasing or acting as an agent, broker, or advisor in connection with leasing real or personal property that is the economic equivalent of an extension of credit?
 - C. Operating a credit card business?
 - D. Rendering estate or trust services?
 - E. Receiving, maintaining or otherwise handling deposits?
 - F. Engaging in any other activity with an economic effect comparable to these activities described in 9A through 9E?

ARE YOU REGULARLY ENGAGING IN BUSINESS IN WEST VIRGINIA?

In determining whether an out-of-state financial organization is regularly engaging in business in West Virginia, we determine if the financial organization has an economic presence in West Virginia. Under the corporation net income tax, W. Va. Code §11-24-7b, and its companion section in the business franchise tax, W. Va. Code §11-23-5a, a financial organization is presumed to be regularly engaging in business in this state if during any year it:

obtains or solicits business with twenty or more persons located within West Virginia

or,

if the sum of the value of your gross receipts attributable to sources in West Virginia is equal to or greater than \$100,000.00.

If you have obtained or solicited business with twenty or more persons within West Virginia and/or if your gross receipts attributable to sources in West Virginia is equal to or greater than \$100,000.00, you are a financial organization presumed to be regularly engaging in business in West Virginia. For tax years beginning on or after January 1, 1991, you are subject to the West Virginia business franchise tax and corporation net income tax.

Business Franchise Tax - *General Information*

The Business Franchise Tax, **imposed upon C corporations, S corporations, and partnerships**, is a tax on the privilege of doing business in West Virginia. Any domestic corporation, any corporation that has its commercial domicile in West Virginia and every corporation and partnership that owns or leases real or tangible personal property in West Virginia or doing business in West Virginia is subject to the Business Franchise Tax. Financial organizations that are "regularly engaging in business" in West Virginia are also subject to the tax.

The term "corporation" includes any corporation, S corporation, joint stock company, and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state. The term "partnership" includes a syndicate, group, pool, joint venture, limited liability company or other unincorporated organization by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

For **corporations**, the measure of the tax is the capital of the corporation and is defined as the average of the beginning and ending balances of: 1) the value of common and preferred stock, 2) plus paid in or capital surplus, 3) plus retained earnings, 4) less treasury stock. **S corporations** will also include the average of the accumulated adjustment account, other adjustment account, and shareholders undistributed taxable income. For **partnerships**, the capital is the average of the beginning and ending balances of the partner's capital accounts. These items of capital are taken from the balance sheet of the taxpayer's federal income tax return as filed with the Internal Revenue Service. Multi-state businesses will apportion their capital to West Virginia using a four factor formula consisting of payroll, property and double weighted sales factors. Out-of-state financial organizations with business activities in this State apportion their capital using a single gross receipts factor.

The tax rate is 70¢ per \$100 of taxable capital with a minimum tax of \$50.

Corporation Net Income Tax - *General Information*

The Corporation Net Income Tax is a tax on the West Virginia taxable income of every domestic or foreign corporation which enjoys the benefits and protection of the government and laws in the State of West Virginia or derives income from property, activity or other sources in West Virginia. Financial organizations that are "regularly engaging in business" in West Virginia are also subject to the tax. The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under federal income tax laws.

This is a federal conformity tax in that the starting point in computing West Virginia taxable income is the federal taxable income of the corporation. Certain increasing and decreasing adjustments, as required by state law, must be made to federal taxable income to arrive at West Virginia taxable income. Multi-state corporations must take one further step to determine West Virginia taxable income. They are required to allocate certain types of nonbusiness income to West Virginia and apportion their remaining income based on a four factor formula consisting of payroll, property and double weighted sales factors. Out-of-state financial organizations with business activities in this State apportion their business income using a single gross receipts factor.

The Corporation Net Income Tax rate as of July 1, 1992 is 9.0%.

FINANCIAL ORGANIZATIONS WITH COMMERCIAL DOMICILE IN WEST VIRGINIA

A financial organization's "commercial domicile" is the principal place from which the trade or business of the financial organization is directed or managed. A commercial domicile of a financial organization that is subject to regulation is the place designated as its principal office with its regulating authority.

A financial organization that is commercially domiciled in West Virginia and which is taxable in another state may not apportion its capital or its income. All of its capital and income shall be subject to tax in West Virginia without apportionment or allocation.

However, financial organizations that are commercially domiciled in West Virginia are allowed a tax credit against their tax liability for taxes paid to another state. The tax credit is the lesser of the amount of tax actually paid to the other state, or the amount of tax they would have paid if the other states tax were calculated using the West Virginia tax rate.

FINANCIAL ORGANIZATIONS NOT COMMERCIALY DOMICILED IN WEST VIRGINIA

A financial organization's "commercial domicile" is the principal place from which the trade or business of the financial organizations is directed or managed. A commercial domicile of a financial organization that is subject to regulation is the place designated as its principal office with its regulating authority.

A financial organization that has its commercial domicile in another state, and that is regularly engaging in business in West Virginia, apportions its capital and the business income component of its taxable income to West Virginia using a single factor gross receipts apportionment formula. The gross receipts factor is a fraction. The numerator of this fraction is the total gross receipts of the financial organization from sources within West Virginia during the year and the denominator is the total gross receipts of the taxpayer wherever earned. The gross receipts factor includes:

1. Gross receipts from the lease or rental of real or tangible personal property.
2. Interest income and other receipts from loans secured by real or tangible personal property.
3. Interest income and other receipts from unsecured consumer loans or consumer loans secured by intangible property.
4. Interest income and other receipts from commercial loans and installment obligations that are unsecured or secured by intangible property.
5. Interest income and other receipts from syndication and participation loans.
6. Fees, service charges, interest income and other receipts from credit cards and travel and entertainment credit cards.
7. Merchant discount income derived from credit card holder transactions.
8. Gross receipts from the performance of services.
9. Gross receipts from the issuance of travelers checks and money orders.
10. Receipts from the sale of tangible personal property.
11. Receipts from the sale of tangible personal property to the United States Government.
12. Gross receipts from other sales.

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.

EFFECTIVE DATE: The special filing rules for financial organizations and consolidated West Virginia returns is effective for taxable years beginning on or after January 1, 1996. An affiliated group that includes one or more financial organizations, may elect to file returns following these guidelines for taxable years beginning after January 1, 1991, subject to the statute of limitation, which is generally three years from the extended due date of the return. Since the statute of limitation for filing such amended returns expires on or before July 1, 1996, the affiliated group has until July 1, 1996 to file such an amended return, notwithstanding provisions that were in effect prohibiting out-of-state financial organizations from filing consolidated returns for those years.

If you have any questions concerning how West Virginia tax's financial organizations or about the business franchise tax or corporation net income tax, please contact:

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Toll free within West Virginia and area code 614 1-800-982-8297
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