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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 666

(By Senators SHARPE AND HELWICK)

PASSED APRIL 9, 2005

In Effect 90 DAYS FROM Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 666

(SENATORS SHARPE AND HELMICK, *original sponsors*)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-23-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-5 of said code, all relating to exemptions for certain insurance companies from business franchise tax and corporation net income tax; and limiting the exemptions to that portion of the tax base which is based on income subject to a tax upon premiums.

Be it enacted by the Legislature of West Virginia:

That §11-23-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-5 of said code be amended and reenacted, all to read as follows:

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and other organizations exempt from tax.

1 The following organizations and persons are exempt
2 from the tax imposed by this article to the extent provided
3 in this section:

4 (a) Natural persons doing business in this state that are
5 not doing business in the form of a partnership (as defined
6 in section three of this article) or in the form of a corpora-
7 tion (as defined in section three of this article). Natural
8 persons include persons doing business as sole proprietors,
9 sole practitioners and other self-employed persons;

10 (b) Corporations and organizations which by reason of
11 their purposes or activities are exempt from federal
12 income tax: *Provided*, That this exemption does not apply
13 to that portion of their capital (as defined in section three
14 of this article) which is used, directly or indirectly, in the
15 generation of unrelated business income (as defined in the
16 Internal Revenue Code) of any corporation or organization
17 if the unrelated business income is subject to federal
18 income tax;

19 (c) Insurance companies which pay this state a tax upon
20 premiums and insurance companies that pay the surcharge
21 imposed by subdivision (1) or (3), subsection (f), section
22 three, article two-c, chapter twenty-three of this code;

23 (d) Production credit associations organized under the
24 provisions of the federal Farm Credit Act of 1933: *Pro-*
25 *vided*, That this exemption does not apply to corporations
26 or associations organized under the provisions of article
27 four, chapter nineteen of this code;

28 (e) Any trust established pursuant to section one hun-
29 dred eighty-six, chapter seven, title twenty-nine of the
30 code of the laws of the United States (enacted as section
31 three hundred two (c) of the Labor Management Relations
32 Act, one thousand nine hundred forty-seven), as amended,
33 prior to the first day of January, one thousand nine
34 hundred eighty-five;

35 (f) Any credit union organized under the provisions of
36 chapter thirty-one or any other chapter of this code:
37 *Provided*, That this exemption does not apply to corpora-
38 tions or cooperative associations organized under the
39 provisions of article four, chapter nineteen of this code;

40 (g) Any corporation organized under this code which is
41 a political subdivision of the State of West Virginia, or is
42 an instrumentality of a political subdivision of this state,
43 and was created pursuant to this code;

44 (h) Any corporation or partnership engaged in the
45 activity of agriculture and farming, as defined in subdivi-
46 sion (8), subsection (b), section three of this article:
47 *Provided*, That if a corporation or partnership is not
48 exclusively engaged in that activity, its tax base under this
49 article is apportioned, in accordance with regulations
50 promulgated by the Tax Commissioner, among its several
51 activities and only that portion attributable to the activity
52 of agriculture and farming is exempt from tax under this
53 article;

54 (i) Any corporation or partnership licensed under article
55 twenty-three, chapter nineteen of this code to conduct
56 horse or dog racing meetings or a pari-mutuel system of
57 wagering: *Provided*, That if the corporation or partner-
58 ship is not exclusively engaged in this activity, its tax base
59 under this article is apportioned, in accordance with
60 regulations promulgated by the Tax Commissioner, among
61 its several activities and only that portion attributable to
62 the activity of conducting a horse or dog racing meeting or
63 a pari-mutuel system of wagering is exempt from tax
64 under this article;

65 (j) For those tax years beginning after the thirtieth day
66 of June, one thousand nine hundred ninety-eight, any
67 corporation or partnership operating as a hunting club:
68 *Provided*, That the corporation or partnership distributes
69 no income or dividends to its owners or stockholders. For
70 the purposes of this subsection, a hunting club is a group

71 of persons owning land which is used principally for
72 hunting purposes by the members of the club and guests,
73 and where any charges made for hunting are principally
74 for the purpose of defraying the costs of operating and
75 maintaining the club and club properties or establishing a
76 reasonable reserve to meet the operating and maintenance
77 costs of the club. The Tax Commissioner shall, by legisla-
78 tive rule promulgated in accordance with article three,
79 chapter twenty-nine of this code, further prescribe the
80 definition of a hunting club and the manner and method in
81 which this credit may be claimed; and

82 (k) For tax years beginning after the thirty-first day of
83 December, two thousand two, any person or other organi-
84 zation engaged in the activity of providing venture capital
85 to West Virginia businesses: *Provided*, That if the person
86 or organization is not exclusively engaged in that activity,
87 only that portion of its tax base under this article that is
88 attributable to the providing of venture capital to West
89 Virginia businesses is exempt from tax under this article
90 and its tax liability under this article is determined by
91 multiplying its precredit tax liability by a fraction equal
92 to one minus a fraction, the numerator of which is its gross
93 receipts attributable to its venture capital activities in this
94 state and the denominator of which is its total gross
95 receipts from all of its business activities in this state. For
96 purposes of this exemption, a "person or organization
97 engaged in the activity of providing venture capital to
98 West Virginia business" means a certified West Virginia
99 capital company as defined in section four, article one,
100 chapter five-e of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-5. Corporations exempt from tax.

1 The following corporations shall be exempt from the tax
2 imposed by this article to the extent provided in this
3 section:

4 (a) Corporations which by reason of their purposes or
5 activities are exempt from federal income tax: *Provided*,
6 That this exemption shall not apply to the unrelated
7 business income, as defined in the Internal Revenue Code,
8 of any such corporation if such income is subject to federal
9 income tax.

10 (b) Insurance companies which pay this state a tax upon
11 premiums and insurance companies that pay the surcharge
12 imposed by subdivision (1) or (3), subsection (f), section
13 three, article two-c, chapter twenty-three of this code.

14 (c) Production credit associations organized under the
15 provisions of the federal Farm Credit Act of 1933: *Pro-*
16 *vided*, That the exemption shall not apply to corporations
17 or associations organized under the provisions of article
18 four, chapter nineteen of this code.

19 (d) Corporations electing to be taxed under subchapter
20 S of the Internal Revenue Code of one thousand nine
21 hundred eighty-six, as amended: *Provided*, That said
22 corporations shall file the information return required by
23 section thirteen-b of this article.

24 (e) Trusts established pursuant to section one hundred
25 eighty-six, chapter seven, title twenty-nine of the code of
26 the laws of the United States (enacted as section three
27 hundred two (c) of the Labor Management Relations Act,
28 one thousand nine hundred forty-seven), as amended, prior
29 to the first day of January, one thousand nine hundred
30 sixty-seven.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ward White
.....
Chairman Senate Committee

D. Rich Bay
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David Holmes
.....
Clerk of the Senate

James M. Bond
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *4th*
Day of *May* 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:45