

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 448**

4 (By Senators Edgell, Beach and Barnes)

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6 [Originating in the Committee on the Judiciary;
7 reported February 17, 2011.]
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11 A BILL to amend and reenact §11-24-11b of the Code of West
12 Virginia, 1931, as amended, relating to the corporation net
13 income tax; updating terms; amending credit for utility
14 taxpayers with net operating loss carryovers; and providing a
15 different procedure for determining the credit.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §11-24-11b of the Code of West Virginia, 1931, as
18 amended, be amended and reenacted to read as follows:

19 **ARTICLE 24. CORPORATION NET INCOME TAX.**

20 **§11-24-11b. Credit for utility taxpayers with net operating loss**
21 **carryovers.**

22 (a) *General.* -- There shall be allowed to every eligible
23 taxpayer a nonrefundable credit against its primary tax liability
24 imposed under this article for any net operating loss carryovers
25 that exist as of December 31, 2006.

1 (b) (1) "Eligible taxpayer" means any person subject to the
2 business and occupation taxes prescribed by article thirteen of
3 this chapter and exercising any privilege taxable under section
4 two-o of this article.

5 (2) "Eligible taxpayer" also includes ~~an affiliated group of~~
6 ~~taxpayers if:~~

7 (A) For tax years beginning on or before December 31, 2008, an
8 affiliated group of taxpayers if the group elects to file a
9 consolidated corporation net income tax return under this article
10 if one or more affiliates included in the affiliated group would
11 qualify as an eligible taxpayer under subdivision (1) of this
12 subsection; or

13 (B) For tax years beginning on or after January 1, 2009, any
14 taxpayer otherwise eligible under this section that is engaged in
15 a unitary business with one or more other taxpayers and is required
16 to file a combined report under this article.

17 (c) *Amount of credit.* -- The amount of credit allowed shall be
18 equal to one-quarter percent of the eligible taxpayer's West
19 Virginia net operating loss carryovers allowed by subsection (d),
20 section six of this article that ~~exist~~ existed as of December 31,
21 2006. Effective for tax years beginning on or after January 1,
22 2009, the amount of credit allowed shall be equal to the difference
23 between:

24 (1) The product of a calculation which is nine percent
25 multiplied by the net operating loss, which accrued prior to
26 January 1, 2007, applied in the tax year; and

1 (2) The product of a calculation which is the current year tax
2 rate for the tax year in which the net operating loss accrued prior
3 to January 1, 2007 is applied as defined by section four of this
4 article multiplied by the net operating loss, which accrued prior
5 to January 1, 2007, applied in the tax year.

6 (d) *Application of credit.* -- The amount of credit allowed
7 shall be taken against the tax liabilities of the eligible taxpayer
8 under this article as shown on its annual return for the ~~taxable~~
9 tax year in which its net operating loss carryovers are utilized,
10 as provided in subsection (d), section six of this article. Any
11 credit remaining after application against the eligible taxpayer's
12 tax liabilities for the current year may be carried forward to
13 subsequent tax years until ~~used~~ the fifth taxable year following
14 the tax year when the remaining current balance of the eligible
15 taxpayer's West Virginia net operating loss carryovers allowed by
16 subsection (d), section six of this article that existed as of
17 December 31, 2006, decreased by net operating loss used or applied
18 in each tax year beginning on or after January 1, 2007, is zero.
19 For purposes of determining the remaining current balance of the
20 eligible taxpayer's West Virginia net operating loss allowed by
21 subsection (d), section six of this article that existed as of
22 December 31, 2006, decreased by net operating loss used or applied
23 in each tax year beginning on or after January 1, 2007 under this
24 section, a first in, first out, net operating loss usage
25 computation shall apply.

NOTE: The purpose of this bill is to provide a different procedure for determining the credit for utility taxpayers with net operating loss carryovers relating to the corporation net income tax.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.