

1 taxpayer members of a unitary group shall determine each of their
2 apportioned shares of the net business income or loss of the
3 combined group on a water's-edge unitary combined reporting basis.
4 In determining tax under this article and article twenty-three of
5 this chapter on a water's-edge unitary combined reporting basis,
6 taxpayer members shall take into account all or a portion of the
7 income and apportionment factors of only the following members
8 otherwise included in the combined group pursuant to section
9 thirteen-a of this article:

10 (1) The entire income and apportionment factors of any member
11 incorporated in the United States or formed under the laws of any
12 state, the District of Columbia or any territory or possession of
13 the United States;

14 (2) The entire income and apportionment factors of any member,
15 regardless of the place incorporated or formed, if the average of
16 its property, payroll and sales factors within the United States is
17 twenty percent or more;

18 (3) The entire income and apportionment factors of any member
19 which is a domestic international sales corporation as described in
20 Internal Revenue Code Sections 991 to 994, inclusive; a foreign
21 sales corporation as described in Internal Revenue Code Sections
22 921 to 927, inclusive; or any member which is an export trade
23 corporation, as described in Internal Revenue Code Sections 970 to
24 971, inclusive;

1 (4) Any member not described in subdivision (1), (2) or (3) of
2 this subsection shall include its business income which is
3 effectively connected, or treated as effectively connected under
4 the provisions of the Internal Revenue Code, with the conduct of a
5 trade or business within the United States and, for that reason,
6 subject to federal income tax;

7 (5) Any member that is a "controlled foreign corporation", as
8 defined in Internal Revenue Code Section 957, to the extent of the
9 income of that member that is defined in Section 952 of Subpart F
10 of the Internal Revenue Code (Subpart F income) not excluding
11 lower-tier subsidiaries' distributions of such income which were
12 previously taxed, determined without regard to federal treaties,
13 and the apportionment factors related to that income; any item of
14 income received by a controlled foreign corporation shall be
15 excluded if such income was subject to an effective rate of income
16 tax imposed by a foreign country greater than ninety percent of the
17 maximum rate of tax specified in Internal Revenue Code Section 11;

18 (6) Any member that earns more than twenty percent of its
19 income, directly or indirectly, from intangible property or
20 service-related activities that are deductible against the business
21 income of other members of the water's-edge group, to the extent of
22 that income and the apportionment factors related thereto. For
23 purpose of this subdivision, income of a member shall not include
24 receipts from transactions giving rise to intangible expense or

1 interest expense of other members which meet the conditions
2 described either in paragraphs (A), (B), (C) or (D) of subdivision
3 (3) of subsection (c), or in paragraphs (A), (B), (C) or (D) of
4 subdivision (3) of subsection (d) of section four-b of this
5 article; and

6 (7) The entire income and apportionment factors of any member
7 that is doing business in a tax haven defined as being engaged in
8 activity sufficient for that tax haven jurisdiction to impose a tax
9 under United States Constitutional standards. If the member's
10 business activity within a tax haven is entirely outside the scope
11 of the laws, provisions and practices that cause the jurisdiction
12 to meet the criteria set forth in the definition of a tax haven,
13 the activity of the member shall be treated as not having been
14 conducted in a tax haven.

15 (b) *Initiation and withdrawal of election to report based on*
16 *worldwide unitary combined reporting. --*

17 (1) An election to report West Virginia tax based on worldwide
18 unitary combined reporting is effective only if made on a timely
19 filed, original return for a tax year by every member of the
20 unitary business subject to tax under this article. The Tax
21 Commissioner shall develop rules governing the impact, if any, on
22 the scope or application of a worldwide unitary combined reporting
23 election, including termination or deemed election, resulting from
24 a change in the composition of the unitary group, the combined

1 group, the taxpayer members and any other similar change.

2 (2) The election shall constitute consent to the reasonable
3 production of documents and taking of depositions in accordance
4 with the provisions of this code.

5 (3) In the discretion of the Tax Commissioner, a worldwide
6 unitary combined reporting election may be disregarded, in part or
7 in whole, and the income and apportionment factors of any member of
8 the taxpayer's unitary group may be included in or excluded from
9 the combined report without regard to the provisions of this
10 section, if any member of the unitary group fails to comply with
11 any provision of this article.

12 (4) In the discretion of the Tax Commissioner, the Tax
13 Commissioner may mandate worldwide unitary combined reporting, in
14 part or in whole, and the income and apportionment factors of any
15 member of the taxpayer's unitary group may be included in or
16 excluded from the combined report without regard to the provisions
17 of this section, if any member of the unitary group fails to comply
18 with any provision of this article or if a person otherwise not
19 included in the water's-edge combined group was availed of with a
20 substantial objective of avoiding state income tax.

21 (5) A worldwide unitary combined reporting election is binding
22 for and applicable to the tax year it is made and all tax years
23 thereafter for a period of ten years. It may be withdrawn or
24 reinstated after withdrawal, prior to the expiration of the

1 ten-year period, only upon written request for reasonable cause
2 based on extraordinary hardship due to unforeseen changes in state
3 tax statutes, law or policy and only with the written permission of
4 the Tax Commissioner. If the Tax Commissioner grants a withdrawal
5 of election, he or she shall impose reasonable conditions necessary
6 to prevent the evasion of tax or to clearly reflect income for the
7 election period prior to or after the withdrawal. Upon the
8 expiration of the ten-year period, a taxpayer may withdraw from the
9 worldwide unitary combined reporting election. Withdrawal must be
10 made in writing within one year of the expiration of the election
11 and is binding for a period of ten years, subject to the same
12 conditions as applied to the original election. If no withdrawal
13 is properly made, the worldwide unitary combined reporting election
14 shall be in place for an additional ten-year period, subject to the
15 same conditions as applied to the original election.

16 (c) For purposes of determining the tax imposed by article
17 twenty-three of this chapter, the term "income", as used in this
18 section, shall be interpreted to mean the tax base or capital, as
19 applicable, for purposes of the tax imposed under article
20 twenty-three of this chapter.

NOTE: The purpose of this bill is to make a technical correction clarifying which entities are to be included in a water's edge group for purposes of 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.