

1                                    **Senate Bill No. 448**

2                                    (By Senators Edgell, Beach and Barnes)

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4 [Introduced February 7, 2011; referred to the Committee on the  
5                                    Judiciary; and then to the Committee on Finance.]

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10 A BILL to amend and reenact §11-24-11b of the Code of West  
11                                    Virginia, 1931, as amended, relating to the corporation net  
12                                    income tax; credit for utility taxpayers with net operating  
13                                    loss carryovers; and providing a different procedure for  
14                                    determining the credit.

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

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

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

19 **§11-24-11b. Credit for utility taxpayers with net operating loss**  
20                                    **carryovers.**

21                                    (a) *General.* -- There shall be allowed to every eligible  
22 taxpayer a nonrefundable credit against its primary tax liability  
23 imposed under this article for any net operating loss carryovers  
24 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,  
8 the group elects to file a consolidated corporation net income tax  
9 return under this article if one or more affiliates included in the  
10 affiliated group would qualify as an eligible taxpayer under  
11 subdivision (1) of this subsection; or

12 (B) For tax years beginning on or before January 1, 2009, the  
13 group is required to file a combined corporate net income tax  
14 return under this article if one or more affiliated included in the  
15 affiliated group would qualify as an eligible taxpayer under  
16 subdivision (1) of this subsection.

17 (c) *Amount of credit.* -- The amount of credit allowed shall be  
18 equal to one-quarter percent of the remaining current balance of  
19 the eligible taxpayer's West Virginia net operating loss carryovers  
20 allowed by subsection (d), section six of this article that ~~exist~~  
21 existed as of December 31, 2006, decreased by the net operating  
22 loss used or applied in each tax year beginning on or after January  
23 1, 2007. Effective for tax years beginning on or after January 1,  
24 2009, the amount of credit allowed shall be equal to the difference  
25 between the current year tax rate as defined by section four of

1 this article and nine percent of the remaining balance of the  
2 eligible taxpayer's West Virginia net operating loss carryovers  
3 allowed by subsection (d), section six of this article that existed  
4 as of December 31, 2006, decreased by net operating loss used or  
5 applied in each tax year beginning on or after January 1, 2007.

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 tax year when the remaining  
14 current balance of the eligible taxpayer's West Virginia net  
15 operating loss carryovers allowed by subsection (d), section six of  
16 this article that existed as of December 31, 2006, decreased by net  
17 operating loss used or applied in each tax year beginning on or  
18 after January 1, 2007, which is zero. For purposes of determining  
19 the remaining current balance of the eligible taxpayer's West  
20 Virginia net operating loss allowed by subsection (d), section six  
21 of this article that existed as of December 31, 2006, decreased by  
22 net operating loss used or applied in each tax year beginning on or  
23 after January 1, 2007 under this section, a first in, first out,  
24 net operating loss usage 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.