

COMMITTEE SUBSTITUTE

FOR

H. B. 3060

(BY DELEGATES KOMINAR, ASHLEY, CARMICHAEL, VARNER,
WHITE AND PETHTEL)

(Originating in the Committee on Finance)
[February 17, 2011]

A BILL to amend and reenact §11-24-11b of the Code of West Virginia, 1931, as amended, relating to creating a permanent method for determining the allowance for certain utilities of tax credits for the remainder of their net operating loss carryovers that existed as of December 31, 2006.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11b. Credit for utility taxpayers with net operating loss carryovers that existed as of December 31, 2006.

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

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

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

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

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

22 (c) *Amount of credit.* -- The amount of credit allowed
23 shall be equal to one-quarter percent of the eligible
24 taxpayer's West Virginia net operating loss carryovers
25 allowed by subsection (d), section six of this article that ~~exist~~
26 existed as of December 31, 2006. Effective for tax years
27 beginning on or after January 1, 2009, the credit is an amount
28 equal to the following subtraction:

29 (1) The product of the amount of net operating loss
30 accrued before January 1, 2007, that is taken in the current
31 tax year, multiplied by nine percent, minus

32 (2) The product of the amount of net operating loss
33 accrued before January 1, 2007, that is taken in the current
34 tax year multiplied by the tax rate for the current year.

35 (d) *Application of credit.* -- The amount of credit allowed
36 shall be taken against the tax liabilities of the eligible
37 taxpayer under this article as shown on its annual return for
38 the ~~taxable~~ tax year in which its net operating loss carryovers
39 are utilized, as provided in subsection (d), section six of this
40 article. Any credit remaining after application against the
41 eligible taxpayer's tax liabilities for the current year may be
42 carried forward to subsequent tax years until ~~used~~ the fifth
43 taxable year following the tax year when the remaining
44 current balance of the eligible taxpayer's West Virginia net
45 operating loss carryovers allowed by subsection (d), section
46 six of this article that existed as of December 31, 2006,
47 decreased by net operating loss used or applied in each tax
48 year beginning on or after January 1, 2007, is zero. For
49 purposes of determining the remaining current balance of the
50 eligible taxpayer's West Virginia net operating loss allowed
51 by subsection (d), section six of this article that existed as of
52 December 31, 2006, decreased by net operating loss used or

53 applied in each tax year beginning on or after January 1,
54 2007 under this section, a first in, first out, net operating loss
55 usage computation shall apply.