

1 **H. B. 3060**

2
3 (By Delegates Kominar, Ashley, Carmichael, Varner,
4 White and Pethtel)

5 [Introduced February 8, 2011; referred to the
6 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

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

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

1 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.